

FINANCIAL SERVICES AND GENERAL
GOVERNMENT APPROPRIATIONS FOR 2015

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS
SECOND SESSION

SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
APPROPRIATIONS

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FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2015

MONDAY, MARCH 24, 2014.

OFFICE OF NATIONAL DRUG CONTROL POLICY

WITNESS

**MICHAEL P. BOTTICELLI, ACTING DIRECTOR, OFFICE OF NATIONAL
DRUG CONTROL POLICY**

Mr. CRENSHAW. The subcommittee will come to order. I want to welcome our witness Acting Director Botticelli. This is the first time he has appeared before the Appropriations Committee, and I appreciate you coming here to testify, and thank you for your service.

The Office of National Drug Control Policy is charged with the extremely difficult task of coordinating multiple Federal agencies' efforts to address many different drug-related issues at home and abroad. In addition, you administer some of the very effective drug-prevention and enforcement grant programs, and today the committee will examine the Office of National Drug Control Policy's fiscal year 2015 budget request, along with your efforts to develop and coordinate our Nation's drug policies.

The budget request submitted by the President has some interesting priorities within this subcommittee's jurisdiction. While the administration is requesting an increase of over \$1 billion for the IRS and an increase of over \$500 million for the GSA, the administration has recommended a decrease below enacted fiscal year 2014 for the High Intensity Drug Trafficking Areas program and the Drug-Free Communities program.

Now, both these are drug-prevention and enforcement programs. They are to mobilize communities and increase collaboration among community law enforcement, and I can say that specifically they have a really good impact in my district down in Jacksonville, Florida. And so I would typically applaud proposed reductions in Federal spending, but it makes me wonder why these drug-prevention and enforcement programs are being reduced, because recently the Attorney General announced that heroin overdoses are, he said, quote, "urgent and growing public health crisis," end quote. States are telling our children that marijuana use is okay by decriminalizing recreational marijuana. Our Nation's problems with cocaine, meth and prescription drugs certainly haven't gone down any. And so I find it a little hard to believe that the administration feels that efforts to keep drugs away from our children and out of our communities should be reduced, while proposing increases for

the bureaucracy of the IRS and deciding to build new Federal buildings.

As the agency that is charged with developing our nation's drug policies, you have the difficult assignment of ensuring that not only do the Department of State, the Department of Defense, the Department of Justice, the Department of Homeland Security, the Department of Health and Human Services and numerous other agencies are all working in a coordinated manner to address our highest-priority drug concerns, and I look forward to your testimony today on how the Office of National Drug Control Policy is leading these efforts on this coordinated role.

More specifically, we have heard concerns that the Food and Drug Administration doesn't always take law enforcement's concerns with prescription drug abuse into account when approving new prescription pain medication. We have also heard concerns that reductions in military spending could significantly reduce counternarcotics activities in Latin America, and that increases the availability of illegal drugs in the United States. And I hope to hear in your testimony today what you all are doing about some of these major concerns.

Our Nation continues to fight a drug problem that takes lives, brings about violence, and harms our communities and families, and I know that you and your staff are working hard to keep our country safe and healthy.

So once again, Acting Director Botticelli, welcome. I look forward to your testimony.

And with that, I would like to turn the microphone over to my colleague Ranking Member Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. I also would like to join you in welcoming the Acting Director of National Drug Control Policy, Michael Botticelli. I love that name. He used to be a second baseman for the Boston Red Sox.

The Office of National Drug Control Policy's mission places it at the forefront of Federal drug policy and the intersection of several of Federal agencies, such as the Department of Justice, Transportation, State and the Treasury.

The fiscal year 2015 budget request for ONDCP is approximately \$311 million, a decrease of \$55 million from the fiscal year 2014 funding level. This will hopefully be targeted towards improved coordination and oversight of interagency drug control programs and policies, something I continue to be concerned about with regards to the agency. This issue is particularly relevant in light of the Attorney General Eric Holder's recent proposal for reduced drug sentencing. I hope we will be able to discuss this issue so I can better understand your role in these efforts and learn what you are doing to reform some of our criminal justice policies with regard to drugs.

I also continue to be interested in the development of a Caribbean Border Counternarcotics Strategy. The fiscal year 2014 Consolidated Appropriations Act included language requiring your agency to develop a comprehensive Caribbean Border Counternarcotics Strategy, just as you have done for other U.S. borders. I believe this is not only an issue of parity, but extremely critical because of increased drug trafficking in the region. It is essential that

Puerto Rico and the Virgin Islands are integrated into Federal counternarcotics strategy.

I look forward to discussing these and other issues with you in detail. Thank you for your service and for appearing before us today.

Mr. CRENSHAW. Thank you.

Chairman Rogers wanted to be here today, but he could not be here, and he send his regards. And so without objection, I will make his statement part of the record.

[The information follows:]

Chairman Hal Rogers
House Committee on Appropriations
Opening Statement (submitted for the record)
Office of National Drug Control Policy
Hearing on FY15 Budget Request
Acting Director Michael Botticelli
March 24, 2014

Mr. Crenshaw, thank you for holding this important hearing today about the budget for our county's Office of National Drug Control Policy (ONDCP). Mr. Botticelli, thank you for being with us to discuss ONDCP's Fiscal Year 2015 budget request.

ONDCP has the critical task of coordinating our country's federal response to illicit drug use. Your budget request for Fiscal Year 2015 is \$366.7 million, constituting a \$55.2 million reduction below last year's enacted level. While I certainly understand that we must all make difficult decisions in this tough budgetary environment, I have to question the wisdom in such drastic reductions to our High Intensity Drug Trafficking Area (HIDTA) programs. HIDTAs throughout the country leverage federal, state and local enforcement resources to maximize anti-drug efforts in the areas hardest hit by drug abuse and diversion. HIDTAs have made a meaningful impact in reducing the drug trade to make our communities safer, more healthy places, and yet it has become an annual tradition for ONDCP to slice its budget to the chagrin of this Committee and so many members of the Congress. I hope we can work together to remedy this problem.

This is particularly important as we continue to fight against the abuse of prescription medications. Your predecessor visited many communities in my congressional district to learn first-hand the truly devastating impact of prescription drug abuse in small town America. Where I live, it is hard to find someone who hasn't been left in the wake of this scourge. When OxyContin first came to the market in the late 1990s, our towns were completely overrun by pills that had been marketed to doctors as completely safe and resistant to abuse. The pills that were supposed to *treat* pain were *creating* pain in the form of addiction, abuse and, tragically, the untimely overdose deaths of far too many mothers, fathers, daughters and sons.

Unfortunately, what once was sequestered in small towns of Appalachian Kentucky and West Virginia has now been characterized by the CDC as a national epidemic. Whether it's rural Vermont, the beaches of South Florida, or the glamorous streets of Hollywood, this crisis knows no socio-economic, gender or racial bounds. It is indiscriminate in its path of destruction, and it will require a coordinated, multi-pronged approach to finally put a dent in the problem. I am heartened that ONDCP has made this a priority through its National Prescription Drug Abuse strategy that focuses on education of the public and prescribers, increased utilization of state-run prescription drug monitoring programs, the proper disposal of unused medications, and strong law enforcement efforts to root out bad actors. I feel like we have made some progress in the past several years, but a number of concerns remain.

First, despite some meaningful reforms on the regulatory front, the FDA has recently taken a major step backwards by approving a pure, hydrocodone painkiller without any protections against abuse. The FDA's justifications for defying the recommendations of its own Advisory Panel against approval are incredibly weak in my estimation, and I would like to hear how you anticipate Zohydro's entrance into the market will impact both our public health officials and the law enforcement community. My region in Southern and Eastern Kentucky is bracing for a wave of abuse and addiction, and I can only pray that the fears of so many in my community do not come to fruition once this drug becomes a household name.

The approval of Zohydro is particularly egregious because with certain regulatory changes at the federal level and a number of statutory changes at the state level, some regions have experienced some much-needed relief from the challenges associated with prescription drug abuse. In Kentucky, for example, we saw overdose deaths plateau in 2012 for the first time in a decade. The FDA risks reversing this hard-fought progress by allowing a new, crushable pill to flood into our streets.

It is important to note, however, that though we have made some meaningful progress in beating back on prescription drug abuse and misuse, we have seen deaths related to heroin increase by 450% in Kentucky. I know that you have been seeing similar trends on the national scale, and this uptick in heroin abuse is incredibly alarming. It raises important questions about the availability of treatment options for those struggling with addiction and also about the strain on our law enforcement officers who must now grapple with a different type of challenge. Operation UNITE in my congressional district has always approached this problem from the perspective of investigations, treatment and education, and so I look forward to hearing from you about how ONDCP is addressing these important concerns at the federal level.

Thank you for being with us not only today, Mr. Botticelli, but for joining us in Atlanta for the National Rx Drug Abuse Summit in a few short weeks. This conference will bring together our country's best, brightest and most passionate policy makers, scientists, law enforcement officials, and advocates, and I am grateful you've taken the time to lend your voice and expertise to the cause. Thank you and I look forward to your testimony.

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Mr. CRENSHAW. And so now, Acting Director Botticelli, I think about art when I think of Botticelli.

Mr. SERRANO. Art?

Mr. CRENSHAW. Art.

Mr. SERRANO. Okay. Okay. So he is an opera singer for the Boston Red Sox.

Mr. CRENSHAW. Okay. But anyway, if you could keep your remarks to about 5 minutes or so, that will give us time for questions, and then your entire statement will be submitted for the record. So Mr. Botticelli.

Mr. BOTTICELLI. Thank you. Chairman Crenshaw, Ranking Member Serrano, Members of the Subcommittee, as indicated, my name is Michael Botticelli. I am the Acting Director of the White House Office of National Drug Control Policy. I am pleased to appear before you today to discuss the Administration's Fiscal Year 2015 budget request for ONDCP, part of the Executive Office of the President.

ONDCP was created by statute in 1988, and November 2013 marked our Office's 25th anniversary. ONDCP establishes policies, priorities and objectives for the Nation's drug control program. The goals of the program are to coordinate the Federal Government's efforts to reduce illicit drug use and its consequences, including drug manufacturing and trafficking, drug-related crime and violence, and drug-related health consequences.

To achieve these goals, the Director of ONDCP is charged with producing the Administration's *National Drug Control Strategy* and ensuring Executive Branch agency drug control budget spending supports this *strategy*. The Administration's *strategy*, first released in 2010, is based upon input from public health and public safety professionals across the country and on decades of research from the Nation's top scientists that demonstrates that addiction is a brain disease, one that can be prevented, treated and from which one can recover.

ONDCP also has responsibility for working with our national and international partners to develop the *National Southwest Border Counternarcotics Strategy*, the *National Northern Border Counternarcotics Strategy*, and the Fiscal Year 2014 enacted budget also contained a directive for ONDCP to develop a *Caribbean Border Counternarcotics Strategy*, which is now in process.

Our Nation faces a number of substance use challenges. For instance, there is an epidemic of opioid drug abuse in this country. Drug overdose deaths, driven by prescription painkillers, surpassed homicides and traffic crashes in the number of injury deaths in America.

Heroin use remains relatively low in the United States as compared to other drugs, but there has been a troubling increase in the number of people using heroin. Evidence suggests that some users, specifically those with chronic opioid addictions, will substitute heroin for prescription opioids since heroin is often cheaper than prescription drugs. A recent report from the Substance Abuse and Mental Health Services Administration found that while only 3.6 percent of people who had started using prescription drugs non-medically ever initiated heroin use in the following 5-year period, four-fifths of recent heroin initiatives had previously used prescrip-

tion pain relievers nonmedically. These findings demonstrate that we need to take a comprehensive approach to addressing opioid drugs, including more widespread use by first responders of naloxone, an emergency opioid overdose reversal medication, as well as expanded access to medication-assisted treatment.

Further, multiple studies show that young people's attitudes towards marijuana use and nonmedical use of prescription drugs are softening. Each day an estimated 4,400 young people under the age of 18 initiate drug use for the first time. This can have a profound effect in the future, since research shows us that the earlier a person begins to use drugs, the more likely they are to develop a substance use disorder.

To enable ONDCP to accomplish the Administration's goals to address these and other numerous challenges from substance use disorders, the President is requesting \$311 million for Fiscal Year 2015. This request represents a decrease of \$55 million from ONDCP's Fiscal Year 2014 enacted budget; however, it has been developed to ensure that we have the resources to meet the *Strategy's* goals while reducing spending.

ONDCP's budget request includes funding for two grant programs that support efforts throughout the Nation to reduce drug use and its consequences. The Drug-Free Communities, or DFC, Support Program provides grants to local drug-free community coalitions to prevent and reduce youth substance use. Directed by ONDCP in partnership with SAMHSA, the DFC program provides grants to local drug-free community coalitions, enabling them to increase collaboration among community partners and to prevent and reduce youth substance use. During 2014, a total of 643 DFC grants were awarded. The President's request for the DFC grants program is \$85.6 million, a decrease of \$6.3 million from the Fiscal Year 2014 enacted budget.

The High Intensity Drug Trafficking Areas, or HIDTA, program helps improve the efficiency and effectiveness of drug-control efforts by facilitating cooperation among Federal, State, local and tribal law enforcement as well as other drug-control organizations. The President's request of \$193.4 million for the HIDTA program is a decrease of \$45 million from the Fiscal Year 2014 enacted budget; however, this request maintains the HIDTA's program focus and mission of reducing drug trafficking and production. Core functions will be maintained.

In addition to ONDCP's responsibilities to develop and implement the *Strategy* and administer its grants programs, the office is responsible for coordinating, overseeing and evaluating the effectiveness of agencies comprising the National Drug Control Program throughout the Federal Government, as well as overseeing the consolidated National Drug Control Budget to ensure that drug control funding proposed by these agencies is adequate to carry out the *Strategy*.

The President's Fiscal Year 2015 National Drug Control Budget request is \$25.4 billion Government-wide. This represents an increase of \$151 million over the Fiscal Year 2014 enacted level. Reflecting the need to address both public health and public safety, the portion of the budget requested for drug treatment and preven-

tion efforts, 43 percent, has grown to its highest level in over 12 years.

I would like to thank you for the opportunity to testify, and I am happy to answer any questions that you might have.

Mr. CRENSHAW. Well, thank you very much.

[The information follows:]



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20503

FY 2015 Budget Request of
the Office of National Drug Control Policy

Subcommittee on Financial Services and
General Government
Committee on Appropriations
United States House of Representatives

Monday, March 24, 2014
3:00 p.m.
2359 Rayburn House Office Building

Written Statement
of
Michael P. Botticelli
Acting Director
Office of National Drug Control Policy

Chairman Crenshaw, Ranking Member Serrano, and Members of the Subcommittee, I am pleased to appear before you today to present the President's Budget Request for Fiscal Year (FY) 2015 for the Office of National Drug Control Policy (ONDCP). I am Michael Botticelli, Acting Director of ONDCP.

The principal purpose of ONDCP is to establish policies, priorities, and objectives for the Nation's drug control program. The goals of the program are to coordinate the Federal Government's efforts to reduce illicit drug use and its consequences, including drug manufacturing and trafficking, drug-related crime and violence, and drug-related health consequences. To achieve these goals, the Director of ONDCP is charged with producing the Administration's *National Drug Control Strategy (Strategy)* and ensuring agency and department drug control budget spending is in support of the Administration's *Strategy*.

November 2013 marked the 25th anniversary of ONDCP, which was first created by the Anti-Drug Abuse Act of 1988. The Office was most recently reauthorized in the Office of National Drug Control Policy Reauthorization Act of 2006. As Americans work together to address our Nation's shared challenges, the health, well-being, and safety of our citizens continues to serve as the basis for strengthening our economy and our country overall. A healthy, productive, and drug-free workforce fosters competitiveness and innovation within our neighborhoods, towns, and communities. Addressing drug use and its consequences will also ensure our fellow citizens can contribute to our shared successes, and that America's future generations will continue to lead the world in innovation and ingenuity.

Our children, and their children, will only be equipped to compete with their peers around the globe if the United States has a sound economy fueled by an educated, prepared, and healthy workforce. By reducing drug use and its consequences, teaching children the value of healthy and responsible life choices, and promoting education, innovation, and excellence, we can ensure that the future is ours to win.

Placing sufficient resources and evidence based strategies behind our efforts will lead to more progress. Recent data show some increase in drug use, particularly marijuana use;¹ however, the rate of Americans using illicit drugs is still lower than the peak usage observed in the late 1970s,² cocaine production in Colombia has dropped to its lowest levels since 1994,³ and alternatives to incarceration are being used to divert non-violent drug offenders into treatment instead of jail. Previous national efforts to reduce smoking, drunk driving, and other public health issues have shown that sustained and balanced approaches can significantly improve public health and safety. The Administration's *Strategy* provides a roadmap to decrease drug use and its consequences.

¹ Substance Abuse and Mental Health Services Administration. Results from the 2012 National Survey on Drug Use and Health: Detailed Tables. Department of Health and Human Services. [September 2013] Available: <http://www.samhsa.gov/data/NSDUH/2012SummNatFindDetTables/DetTabs/NSDUH-DetTabsSect7peTabs1to45-2012.htm#Tab7.44B>

² Substance Abuse and Mental Health Services Administration. Unpublished estimate from the National Household Survey on Drug Abuse and the National Survey on Drug Use and Health

³ Department of State, Bureau of International Narcotics and Law Enforcement Affairs. 2013 International Narcotics Control Strategy Report [March 2013] Available: <http://www.state.gov/j/inl/rls/nrcrpt/2013/vol1/index.htm>

In 2010, ONDCP launched the Obama Administration's inaugural *Strategy*, emphasizing community-based drug prevention, integrating evidence-based interventions and treatment into the healthcare system, promoting innovations in the criminal justice system to decrease recidivism, and forging and maintaining strong international partnerships to disrupt drug trafficking organizations. As part of that *Strategy*, we proposed a number of five-year goals to reduce the prevalence of drug use in America. We have made some progress in advancing these goals. For instance, we are on our way to achieving our goals to reduce use of illicit drugs (except marijuana) by youth and young adults, reducing the number of chronic users of cocaine and methamphetamine, and reducing the prevalence of drugged driving. However, other goals, such as reducing drug-induced deaths and drug-related morbidity, have proven more problematic. We soon will release the 2014 update of the *Strategy*, which will provide information on our progress to date in implementing the goals we established in the inaugural *Strategy*.

In addition to our work with international partners as part of the overall *Strategy*, we have responsibility for working with our national and international partners in the development of the *National Southwest Border Counternarcotics Strategy* and the *National Northern Border Counternarcotics Strategy*. The FY 2014 enacted budget also contains a directive for ONDCP to develop a *Caribbean Border Counternarcotics Strategy*, which is now in process. These strategies further our mission to help disrupt the trafficking of illegal drugs into this country while enhancing our efforts to provide border communities with enhanced prevention and drug treatment assistance that will help curb drug use in the long term.

ONDCP's Budget Request for FY 2015

ONDCP's budget reflects a commitment to responsibly reduce spending without compromising our ability to support the President in achieving the goals set forth in the *Strategy*. The Administration's FY 2015 Budget Request for ONDCP is \$311,423,000 and 95 full-time equivalents (FTEs). Our budget, programs, and policy emphases support a *Strategy* which represents a balanced approach to confronting the complex challenge of drug use and its consequences. Our budget builds on several major drug policy legislative achievements that have occurred since the initial *Strategy*.

ONDCP Signature Initiatives

As part of our work to implement the *Strategy*, ONDCP focuses on three signature initiatives, in addition to its ongoing activities, to help achieve the goals of the Administration's *Strategy*. These signature initiatives are in the areas of drug prevention, opioid drug abuse, and drugged driving.

Drug Prevention

There is some encouraging news about youth substance use in some areas. Survey data reveal that cigarette smoking and alcohol use among youth have continued to decline. However, these data also show there are areas of concern. Young people's attitudes toward marijuana use and nonmedical use of prescription drugs are softening - often a precursor to an uptick in actual use, which is also being seen in some surveys.⁴ More 12th graders now smoke marijuana than

⁴ See, e.g., National Institute on Drug Abuse. *Monitoring the Future Survey, Overview of Findings 2013*. Available: <http://www.drugabuse.gov/monitoring-future-survey-overview-findings-2013>; and Substance Abuse and Mental Health Services

cigarettes, and their perception of marijuana's risk is at their lowest point since the late 1970s,⁵ in spite of research demonstrating that heavy use starting in adolescence can have life-long negative consequences on cognitive development.⁶ Young adults between the ages of 18 and 25 have the highest rates of current illicit drug use (over 20 percent), and each day, an estimated 4,400 young people under age 18 initiate drug use for the first time.⁷ This also means the Administration will continue to oppose legalization efforts based on a concern for public health, as we are concerned it would increase the availability, use, and familiarity of drugs and thereby negatively impact the health of our communities.

Drug and alcohol use affects health outcomes, job opportunities, family life, military preparedness, and academic outcomes. Over the past three years, the Obama Administration has committed over \$27 billion to substance use prevention programs and support for expanding access to treatment for people with substance use disorders, ensuring that Federal funding to address the public health aspects of the issue has increased every year. The President's FY 2015 \$10.9 billion request for treatment and prevention is now nearly 20 percent higher than the \$9.2 billion request for Federally-funded domestic drug law enforcement and incarceration. Prevention is an essential component of this new public health approach and has become one of the highest national drug policy priorities of the Administration. We know prevention works. Recent research has shown that each dollar invested in a proven school-based prevention program can reduce costs related to substance use by as much as \$18.⁸ With this in mind, drug prevention is a foundational pillar of the *Strategy*. The Administration is committed to drug prevention and is investing significant resources into national efforts to prevent drug use before it starts. Federal resources totaling \$1.3 billion are requested in FY 2015 across all of the agencies and departments included in the National Drug Control Program Agencies Budget to support education and outreach programs aimed at preventing the initiation of drug use.

We are constantly monitoring and analyzing the results of prevention programs to identify what works and what does not, and seek ways to make our prevention efforts more effective. And we are committed to the partnership between prevention organizations and law enforcement professionals to enhance prevention activities and increase education surrounding substance abuse.

Opioid Drug Abuse

The abuse of opioids – a category of drugs including heroin and prescription pain relievers like oxycodone and hydrocodone – is having a considerable impact on public health and safety in

Administration. Results from the 2012 National Survey on Drug Use and Health: Detailed Tables. Department of Health and Human Services. [September 2013]. <http://www.samhsa.gov/data/NSDUH/2012SummNatFindDetTables/DeTabs/NSDUH-DeTabsSect3peTabs1to25-2012.htm#Tab3.1B>

⁵ National Institute on Drug Abuse. *Monitoring the Future Survey, Overview of Findings 2013*. Available: <http://www.drugabuse.gov/monitoring-future-survey-overview-findings-2013>

⁶ Gruber AJ, Pope HG, Hudson JL, Yurgelun-Todd D. Attributes of long-term heavy cannabis users: A case control study. *Psychological Med* 33(8):1415–1422, 2003. Available: <http://www.ncbi.nlm.nih.gov/pubmed/14672250>

⁷ Substance Abuse and Mental Health Services Administration. *Results from the 2012 National Survey on Drug Use and Health: Detailed Tables*. Department of Health and Human Services. [September 2013]. Available: <http://www.samhsa.gov/data/NSDUH/2012SummNatFindDetTables/DeTabs/NSDUH-DeTabsSect1peTabs1to46-2012.htm#Tab1.21B>

⁸ Miller, T., Hendrie, D. (2009). Substance abuse prevention dollars and cents: a cost-benefit analysis. DHHS Pub. No. (SMA) 07-4298. Rockville, MD: Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration

communities across the United States. Of the more than 38,300 overdose deaths in 2010, opioid pain relievers were involved in over 16,600, while heroin was involved in approximately 3,000.⁹ Overall, drug overdose deaths now outnumber deaths from gunshot wounds (31,000) or motor vehicle (35,000) crashes in the United States.¹⁰ Approximately 4.9 million Americans ages 12 or older reported using prescription pain relievers non-medically within the past month.¹¹ This makes prescription pain relievers the second most common type of drug used illicitly in the United States, trailing only marijuana. While heroin use remains relatively low in the United States as compared to other drugs, there has been an increase in the number of people using the drug in recent years – from 373,000 past year users in 2007 to 669,000 in 2012.¹²

There has been considerable discussion around potential connections between the non-medical use of prescription opioids and heroin use. There is evidence to suggest that some users eventually begin to substitute heroin for prescription opioids, which are often more expensive than heroin. While research into the potential nexus between these two types of opioids remains sparse, a recent report from the Substance Abuse and Mental Health Services Administration found that four out of five (79.5%) recent heroin initiates had previously used prescription pain relievers non-medically. However, only a very small proportion (3.6%) of those who had started using prescription drugs non-medically initiated heroin use in the following 5-year period.¹³ This suggests that while most new heroin users have previously used prescription opioids non-medically, a very small portion of all non-medical prescription drug users ever transitions to heroin.

As this Subcommittee is aware, in April 2011 the Administration released its comprehensive *Prescription Drug Abuse Prevention Plan*, entitled “Epidemic: Responding to America’s Prescription Drug Abuse Crisis.” This plan builds upon the *Strategy* and brings together Federal, state, local, and tribal leaders to reduce diversion and abuse of prescription drugs. It strikes a balance between our need to prevent diversion and abuse of pharmaceuticals with the need to ensure legitimate access. The *Plan* focuses on improving education for patients and healthcare providers, supporting the expansion of state-based prescription drug monitoring programs, developing more convenient and environmentally responsible disposal methods to remove unused medications from the home, and reducing the prevalence of pill mills and doctor shopping through targeted enforcement efforts. The Administration has made considerable progress in all four areas of the *Plan*.

⁹ Centers for Disease Control and Prevention, National Center for Health Statistics. Underlying Cause of Death 2000-2010 on CDC WONDER Online Database. Extracted May 2013.

¹⁰ Centers for Disease Control and Prevention, National Center for Health Statistics. Underlying Cause of Death 2000-2010 on CDC WONDER Online Database. Extracted May 2013.

¹¹ Substance Abuse and Mental Health Services Administration. *Results from the 2012 National Survey on Drug Use and Health: Detailed Tables*. Department of Health and Human Services. [September 2013]. Available: <http://www.samhsa.gov/data/NSDUH/2012SummNatFindDetTables/DefTabs/NSDUH-DefTabsSec1peTabs1to46-2012.htm#Tab1.1A>

¹² Substance Abuse and Mental Health Services Administration. *Results from the 2012 National Survey on Drug Use and Health: Detailed Tables*. Department of Health and Human Services. [September 2013]. Available: <http://www.samhsa.gov/data/NSDUH/2012SummNatFindDetTables/DefTabs/NSDUH-DefTabsSec7peTabs1to45-2012.htm#Tab7.2A>

¹³ Substance Abuse and Mental Health Services Administration. *Associations of Nonmedical Pain Reliever Use and Initiation of Heroin Use in the United States*. Department of Health and Human Services. [August 2013]. Available: <http://www.samhsa.gov/data/2k13/DataReview/DR006/nonmedical-pain-reliever-use-2013.pdf>

In June 2012, ONDCP convened top officials from Federal agencies to discuss the latest data regarding heroin trends in the United States and the Administration response. ONDCP directed Federal public health and safety officials to increase data sharing, identify trends in substitution between prescription opioid misuse and heroin use, and coordinate a timely and evidence-based response to any emerging trends in the use of opioids. This meeting also reinforced the existing overdose prevention and opioid use disorder treatment goals outlined in the *Strategy*.

The Administration is focusing on several key areas to reduce and prevent opioid overdoses, including heroin use; educating the public about overdose risks and interventions; increasing access to naloxone, an emergency opioid overdose reversal medication; and working with states to improve the operations and functionality of prescription drug monitoring programs and promote Good Samaritan laws and other measures that can help save lives. With the recent rise in overdose deaths across the country, it is increasingly important to prevent overdoses and make antidotes available.¹⁴

Drugged Driving

Driving after consuming drugs or alcohol continues to pose a significant threat to public safety. In response to this problem, four years ago, ONDCP identified drugged driving as a national priority in the Administration's inaugural *Strategy* and set an ambitious goal of reducing drugged driving in America by 10 percent by the year 2015. In the four years since we started, we have made progress. President Obama declared December National Impaired Driving Prevention Month in 2010, 2011, 2012, and 2013 and called on all Americans to commit to driving sober, drug free, and without distractions. And in October 2011, leaders in youth prevention, highway safety, law enforcement, government, and research gathered at ONDCP's Drugged Driving Summit to identify priorities to reduce this problem. At this event, ONDCP and Mothers Against Drunk Driving agreed to raise public awareness regarding the consequences of drugged driving. The "Above the Influence" media campaign, now managed by the Partnership at Drugfree.org, also released a Drugged Driving Toolkit to assist parents and community leaders with drugged driving prevention. In 2013 and 2014, the National Transportation Safety Board has included eliminating substance-impaired driving on its Most Wanted List, the top 10 advocacy and awareness priorities for the agency.

The Administration is also making training more available to law enforcement and prosecutors, creating an online version of the Advanced Roadside Impaired Driving Enforcement program (ARIDE), a training course that gives officers additional skills to recognize signs and symptoms of drugs other than alcohol. ONDCP is also supporting driving-simulator research to examine driving impairment as a result of marijuana and combined marijuana and alcohol use and to correlate the findings with the results of oral fluid testing.

As these initiatives move forward, ONDCP continues to support enhanced laws against drugged driving. Through the dissemination of best practices guidance documents, educational packets, and webinars, ONDCP provided states with information and technical assistance needed to enact drugged driving legislation. This reckless behavior not only includes drunk driving, but also driving after taking drugs.

¹⁴ Centers for Disease Control and Prevention, National Center for Health Statistics. Underlying Cause of Death 2000-2010 on CDC WONDER Online Database. Extracted May 2013.

ONDCP-Funded Initiatives

ONDCP's annual appropriation includes funding for its two major grant programs and for anti-doping activities.

Drug-Free Communities Support Program

The President's FY 2015 Budget requests \$85,676,000 for the Drug-Free Communities (DFC) Support Program. The DFC Support Program, created by the Drug Free Communities Act of 1997, serves as the Nation's leading effort to mobilize communities to prevent youth drug use. Directed by ONDCP in partnership with SAMHSA, the DFC Program provides grants to local drug-free community coalitions, enabling them to increase collaboration among community partners and to prevent and reduce youth substance use. ONDCP provides oversight of the DFC Support Program to include final award determination, program regulation, policy, and its national evaluation.

During FY 2013, a total of 643 DFC grants were awarded (620 DFC grants and 23 DFC Mentoring grants). These awards followed a competitive grant process, with 484 applicants for the DFC Program and 32 applicants for the DFC Mentoring Program. In September 2014, a total of 74 grantees will graduate out of the DFC program after receiving 10 years of funding, with 83 more completing their first 5 years of funding.

The most recent evaluation of the program found that rates of substance abuse are continuing to decline in DFC communities between DFC coalitions' first report and most recent report. The DFC National Evaluation found that past 30-day prevalence of use declined significantly from first to most recent observation of core measures data collected across targeted substances which include alcohol, tobacco, and marijuana at the middle school and high school level. At the same time, youth reports of perceptions of substance use as harmful and of parental disapproval of substance use are also improving in communities served by DFC grantees.

Of the amount requested for DFC in the FY 2015 President's Budget, \$76,821,920 will fund grants made directly to approximately 614 community-based coalitions focusing on preventing and reducing youth substance abuse throughout the United States. In addition, \$2,000,000 will be provided as a directed grant award to the National Community Anti-Drug Coalition Institute to provide training, technical assistance, and publications to coalitions. The remaining \$6,854,080 (8 percent of the total request) will fund program support expenses, such as costs associated with the position of DFC Administrator, specific training provided to grantees, daily oversight of grants via an interagency agreement, and the DFC national cross-site evaluation.

High-Intensity Drug Trafficking Areas (HIDTA)

The President's FY 2015 Budget requests \$193,400,000 for the HIDTA program. The FY 2015 budget request maintains the HIDTA program's focus and mission of reducing drug trafficking and production.

The purpose of the HIDTA program is to reduce drug trafficking and production in the United States by facilitating cooperation among Federal, state, local, and tribal law enforcement agencies. Nonetheless, the HIDTA program is a locally-based program that responds to local

problems. The agencies share information and implement coordinated enforcement activities; enhance law enforcement intelligence sharing among Federal, state, local, and tribal law enforcement agencies; provide reliable law enforcement intelligence to law enforcement agencies needed to design effective enforcement strategies and operations; and support coordinated law enforcement strategies to maximize available resources and reduce the supply of illegal drugs in designated areas. In addition to the individual initiatives supported by the 28 HIDTAs, there are three national initiatives supported by the HIDTA Program: the Domestic Highway Enforcement Program, the National Marijuana Initiative (NMI), and the National Methamphetamine and Pharmaceuticals Initiative (NMPI). NMI and NMPI are training and best practices initiatives.

In consultation with the HIDTA Directors, starting in FY 2013 ONDCP developed a plan for the allocation of discretionary funds that does not designate funds for specific projects but rather prioritizes three strategic categories, which allows requests to be based on each HIDTA's significant threats. The strategic categories are requirements that:

- strengthen the HIDTA program infrastructure, either regionally or nationally, such as enhanced connectivity and information sharing;
- address emergent drug threats, such as the production and trafficking of synthetic drugs, the increase of trafficking and abuse of heroin, and new threats in areas petitioned for HIDTA designation; and
- advance *National Drug Control Strategy* priorities, such as prevention activities that enable law enforcement personnel to participate in community prevention efforts.

The HIDTA program helps improve the effectiveness and efficiency of drug-control efforts by facilitating cooperation between drug-control organizations through resource and information sharing, and co-locating and implementing joint initiatives. HIDTA funds help Federal, state, local, and tribal law enforcement organizations invest in infrastructure and joint initiatives to confront drug-trafficking organizations.

Currently, 22 regional HIDTA programs support prevention initiatives across the country, connecting law enforcement with local prevention efforts to support best-practice activities designed to reduce drug use by replicating the HIDTA multi-agency model. HIDTA members work with community-based coalitions and adhere to evidence-based prevention practices, such as community mobilization and organizational change.

Anti-Doping Programs

The President's FY 2015 Budget request for ONDCP anti-doping activities is \$7,700,000. ONDCP oversees the grant administration for U.S. anti-doping activities. These funds are used to educate athletes on the dangers of drug use, eliminate doping in amateur athletic competitions, and rely on standards established and recognized by the United States Olympic Committee. They also support efforts to enforce compliance with the World Anti-Doping Code and adjudicate athlete appeals involving doping violations. Anti-doping activities seek to raise awareness about the health dangers and ethical implications of drug use in sport among young and future athletes. In addition, these activities support state-of-the-art research within the scientific and public health communities related to anabolic steroids and other performance

enhancing drugs. ONDCP also requests \$2,000,000 in FY 2015 for World Anti-Doping Agency (WADA) membership dues. This funding level will allow the U.S. Government to maintain compliance with its assessed WADA dues.

Salaries and Expenses

The President's FY 2015 budget request includes \$22,647,000 for ONDCP Salaries and Expenses (S&E). The requested funding will allow ONDCP to continue to focus on the goals of the *Strategy* by providing guidance to, and oversight and coordination of, the National Drug Control Program agencies. The S&E account provides support for 94 FTEs (the remaining FTE is funded through DFC), same as the FY 2014 enacted budget. Funding requested for the S&E account provides personnel compensation and operational support for ONDCP. The funding and FTE resources enable the agency to perform varying activities between both drug policy work and the administration of ONDCP programs. S&E funds support ONDCP's ability to meet its responsibilities, advise the President on drug control issues, and ensure the efficient and effective coordination and oversight of National Drug Control Program agencies' programs and policies.

The National Drug Control Budget

The President's FY 2015 National Drug Control Budget (Budget) request of \$25.4 billion, an increase of \$0.2 billion (0.6 percent) over the FY 2014 enacted level of \$25.2 billion, will support a balanced approach that brings all sectors of society together in a national effort to improve public health and public safety. This request demonstrates the Administration's continuing support for key policies and programs proven to make America healthier and safer. These efforts include expanding prevention, early intervention, treatment, recovery, and "smart on crime" efforts. It also continues support for international partnerships working to combat transnational criminal organizations. Under this Administration, Federal funding for public health approaches to drug policy have increased every year. In fact, the portion of the Budget requested for drug treatment and prevention efforts (43 percent) has grown to its highest level in over 12 years.

As noted earlier, the request includes Federal resources totaling \$1.3 billion to support education and outreach programs aimed at preventing the initiation of drug use while encouraging community outreach efforts focused on getting those who have begun to use illicit drugs to cease their use – a nearly 5 percent increase over the FY 2014 enacted level. New this year are efforts by HHS agencies to provide funding to prevent prescription drug misuse and abuse in high-priority age groups (including young and middle-aged adults) and other populations through education and other prevention strategies.

The FY 2015 Budget proposes \$9.6 billion in Federal funds for early intervention, treatment, and recovery services focused on reducing drug use and its consequences. These services focus on assisting individuals with substance use disorders to become free from the health consequences of the use of illicit drugs, including the abuse of prescription drugs. This is an increase of nearly 9 percent over the FY 2014 enacted level.

Federal, state, local, and tribal law enforcement agencies play an integral role in the Administration's balanced approach to reducing drug use and its consequences. The FY 2015 Budget proposes \$9.2 billion for domestic law enforcement efforts. This domestic law

enforcement support includes state and local assistance, as well as Federal investigations, prosecution, and corrections.

The FY 2015 Budget continues support to disrupt the flow of drugs entering the United States. The Federal Budget for interdiction totals \$3.9 billion. This includes support for Department of Homeland Security and Department of Defense (DoD) programs providing support for programs working to interrupt the trafficking of illicit drugs into the United States by targeting the transportation links, bringing traffickers and other criminals to trial, and addressing money laundering and associated corruption.

Support for international partnerships that help facilitate the disruption or dismantlement of the most significant international drug organizations is another key area supported by this Budget. The FY 2015 Budget requests nearly \$1.4 billion to provide such international support, but it should be noted that the DoD's Overseas Contingency Operations FY 2015 request has not yet been finalized.

Performance evaluation is a key tool for ONDCP in its oversight of the National Drug Control Program agencies – it enables ONDCP to assess the extent to which the *Strategy* achieves its goals and account for the contributions of drug control agencies. ONDCP tracks and reports performance measures and targets established for each goal and objective in the *Strategy*. ONDCP, in collaboration with its interagency partners, has developed a performance monitoring and assessment mechanism – the Performance Reporting System (PRS) – that monitors key performance measures to assess interagency progress toward the goals and objectives of the *Strategy*. The first PRS assessment will be released with the 2014 *Strategy*. This assessment, and follow-on assessments, will be used to inform prospective policymaking, planning, future *Strategy* development and implementation, and budget formulation and resource allocation.

Conclusion

ONDCP supports a comprehensive public health and safety approach in an effort to reduce drug use and its consequences. The President's FY 2015 budget request has been carefully developed to ensure we have the resources to meet the Administration's *National Drug Control Strategy* goals.

Thank you for this opportunity to testify. I am happy to answer any questions.

Mr. CRENSHAW. Let me start by asking, you mentioned HIDTA was going to be reduced by \$45 million, and I mentioned in my opening remarks that it seems like kind of a strange sense of priorities when you ask for a billion dollars for the IRS and half a billion dollars to the General Services Administration, and yet the last couple of years, the funding for HIDTA has been reduced in the proposed budgets, but Congress each year has restored that funding. And, again, in today's world when States are legalizing marijuana; poppy production is up in Afghanistan; cocaine, heroin use, all that is up, what do you think the impact would be if you were to reduce it by \$45 million?

Mr. BOTTICELLI. Clearly, Chairman, the HIDTA program is really essential at the Federal, State and local levels in terms of being able to enhance efficiency and information sharing among law enforcement entities. We consider that an incredibly valuable program.

As you know, our challenge was within restrained resources making sure that we maintained core functions and core services with our HIDTA program. So to that extent this will not result in any elimination of any of our HIDTA programs. It will maintain its core mission and core functions.

The biggest, I think, impact will be on the HIDTA's ability to address emerging drug threats that we see in the community. So it will preserve the core functions and preserve our core HIDTA infrastructure.

Mr. CRENSHAW. So in your opinion, it is still effective the things that you are doing, it is just a matter of not as much money to go around. But as you know, the last couple years the Congress has restored that funding, and so you wouldn't be upset if that happened again.

Mr. BOTTICELLI. We see our HIDTA programs as incredibly valuable programs. And one of the things that—over the past year that I have seen with our HIDTA programs is their ability to be flexible and nimble at the State and local level in terms of really responding, I think, to local threats and local emergencies.

Mr. CRENSHAW. Gotcha.

Another question just briefly that you have this drug free community program, and I think there are like 600 coalitions across the United States. They work on mobilizing communities and increased collaboration, things like that. How do you measure the progress that is being made by those community groups that are—those are grants, they receive your funds. I mean, how do you go about deciding who is effective, how effective, things like that?

Mr. BOTTICELLI. Sure. So one of the things that I think we know is that local drug use patterns are different among localities, and so what it requires to really reduce substance use at a local level is really looking at those community factors, but also convening all of the local stakeholders, law enforcement, health and human service agencies, schools, to really look at implementing evidence-based prevention programs at the local level.

As you indicated, for Fiscal Year 2014, we are estimating that we are going to have 672 of those local coalitions. They have been nationally evaluated, and it has been shown that those communities that have Drug-Free Communities programs are able to substan-

tially reduce drug use in their communities. So these are programs that are implementing evidence-based prevention programs that are also nationally evaluated and have been shown to reduce substance use among youth at the local level.

Mr. CRENSHAW. Well, those funds are being reduced, or proposed to be reduced. How would that impact your ability? Would you give less grants, or would the grants be smaller? How would you handle that reduction?

Mr. BOTTICELLI. Sure. So at this point, it doesn't mean that we would take back any existing grants, so those grants would exist through the grant cycle. What it would mean is that we would probably be able to award 50 less grants in Fiscal Year 2015 compared to what we are estimating for Fiscal Year 2014.

Mr. CRENSHAW. How much do you think it would take to continue to fund the number of grants that you have funded in the past?

Mr. BOTTICELLI. So in terms of looking at kind of level funding in terms of Fiscal Year 2014 enacted, that is approximately \$92 million for the program. It is \$92 million.

Mr. CRENSHAW. Gotcha. Well, thank you.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. That was going to be my first question, also, that you asked, so let me just—I don't know if you have got the number the right—the same way as I see it. It was—not you, but Mr. Botticelli. You said 672, but that is what it is now. It will be reduced to 614; am I correct?

Mr. BOTTICELLI. That is correct.

Mr. SERRANO. Okay. And you spoke about spreading the money around more. You see, that is a program that seems to be working, so we are wondering why the administration would want to cut or propose a cut? And I think you are hearing something, unless I heard it wrong, something that usually you don't hear from all members of a committee, and that is asking the question, you know, how can you continue to function at a level that does credit to a program that obviously works and that has the support of many members of this committee?

Mr. BOTTICELLI. You know, clearly our Drug-Free Communities program is one of the backbones of our prevention infrastructure in the United States. It is an incredibly valuable program to us. Obviously, you know, we had to look at how do we have restraint in spending in Fiscal Year 2015.

Again, I think the proposal, if enacted, would be that we wouldn't eliminate any of the existing grantees; it just would mean that we would have about 50 less new grants in Fiscal Year 2015.

Mr. SERRANO. So you don't think it would be a result of reducing from 672 to 614, because we went by those numbers? There would be a reduction to 614 or not?

Mr. BOTTICELLI. So it would be an overall reduction, but it does not mean that we would eliminate any existing grantees. So that money would continue. It just means that we would have less money, about—we would be able to award 50 less grants, new grants, in Fiscal Year 2015.

Mr. SERRANO. Okay. Let me ask you about the Caribbean Border Counternarcotics Strategy. Now, that was, as you had mentioned,

language that was put in the bill at the request of many of us, including the Resident Commissioner from Puerto Rico Mr. Pierluisi. And, you know, this issue speaks to two situations, and a lot of the Florida Members can speak to it, and that is that, first, the territories get less attention than the States, but, most importantly in this case, that we are, shooting ourselves in the foot by allowing one border, if you will, to be totally open, not only to enter the territory, but then to make it to the mainland, as we say. So it is both setting this one up—and I want to hear your thoughts on how quickly that could be set up—setting this one up not only helps those two territories from having the drugs come into their area, but then it helps the States, especially Florida, with the drugs coming into the States.

Mr. BOTTICELLI. Correct. You know, clearly our ability to interdict drugs, particularly in the Caribbean, is really core to the *Strategy*. And as you indicated, you know, the more drugs that we can intercept and interdict, the less that we have coming to our local communities. And clearly having a Caribbean strategy, I think, that supports the work that we are trying to do domestically is particularly important.

So we have made progress in terms of the development of that Caribbean strategy. So we have already convened meetings across our interagency looking at how each of our relevant Federal interagency partners can support the priority action items of the Caribbean strategy, and we continue to work with them. And so that strategy is in progress, and we hope to have that to you shortly.

Mr. SERRANO. Well, I hope so. And I know we have other Members, Mr. Chairman. I just want to make a statement for the record, and that is something I have said over and over and over again in my 24 years in Congress, that any time drugs enters one of our territories, it has, in fact, entered into the United States. And a lot of people see it as it didn't enter the United States until it gets to Florida or to Texas or to New Mexico. Not true. If it enters any territory under the American flag, it entered the United States, and it should be fought in the same way it is fought when it enters one of the States. And I thank you for your reply.

Mr. BOTTICELLI. Great. Thank you.

And I was just handed a note. We actually have staff who will be meeting with your staff on Friday to be updating you on our progress to the strategy.

Mr. SERRANO. Thank you.

Mr. BOTTICELLI. You are welcome.

Mr. CRENSHAW. Thank you.

Mr. WOMACK.

Mr. WOMACK. Thank you, Mr. Chairman.

Thank you, Mr. Botticelli, for your testimony here today. I want to confine my remarks initially and my questions on weed, because there has certainly been a lot of discussion about it from the medical side of the equation to just the outright legalization for recreational use. And I have my own pretty hard-core philosophical objections to what is going on around our country, but my question is as far as the ONDCP is concerned, help me understand what involvement your office has had with States like Colorado, et alia,

that have gone in this direction in helping educate people on what the true effects of this increased use happens to be.

Mr. BOTTICELLI. Sure. I think you know that the Office of National Drug Control Policy and the Administration has remained opposed to drug legalization, and I think we come at this from a public health standpoint, particularly as it relates to what we think the impact will be on our youth. You have raised, I think, some pretty important concerns. You know, we now have more 12th graders who are using marijuana than are smoking cigarettes, and their perception of risk is at the lowest level than it has been since the 1970s. And we know that generally when youth perceive something as less risky, they are more likely to try a substance.

Clearly we have been concerned in terms of what the impact will be, particularly in Colorado; but not only that, what is the message that that sends our youth nationally in terms of what it means to use marijuana? We have been engaged, following on the Department of Justice criteria, with both Colorado and Washington as well as with our Federal partners to really monitor both the public safety and public health impact that legalization will have in Colorado and Washington, in terms of the transportation of marijuana from one State to another, [and] are we going to see increased prevalence in use among our youth. We have been engaged with Governor's offices in both Colorado and Washington as well as the health departments in Colorado and Washington to basically see how they are going to implement regulatory schemes to ensure that they are doing everything possible to mitigate both the public's health safety and public health impact of legalization efforts.

Mr. WOMACK. So you have weighed in; your office has helped try to educate the country on this particular subject. And do you anticipate that there might be a more—a bigger or higher response, a larger response, a more weighted response toward what we see going on around the country?

Mr. BOTTICELLI. You know, again, I think what we have generally tried to do is, with our existing resources that we have had, both within our Drug-Free Communities and our other resources, to how do we continue to highlight prevention efforts particularly as it relates to things like alcohol and marijuana. And our Drug-Free Communities have really been important resources that we have had to really heighten the prevention messaging that we need to really counteract some of the messages that youth are getting in terms of the perceived safety, if you will, of marijuana.

Mr. WOMACK. Now, there is no way we can put a crystal ball in front of you to kind of look into the future. If there was a crystal ball in front of you, do you anticipate having to reach back to, say, Colorado as an example, since I have already mentioned them, and have one of these I-told-you-so moments?

Mr. BOTTICELLI. What the Department of Justice has laid out in terms of their Federal law enforcement priorities was a clear indication that they reserve the right to take subsequent action if Colorado and Washington haven't demonstrated their ability to meet those criteria as it relates to public health and public safety.

As a public health person, I think we have every reason to think that we are going to see some problems in Colorado and Washington. And, again, usually the data and science suggest that as

youth see something as less harmful, that there will be a correlational increase in terms of their use, and I think that is what we are seeing nationally. So I do think that we have some concerns both in terms of Colorado and nationally in terms of looking at the data that we have now, but also what that means going forward.

Mr. WOMACK. Finally, Mr. Chairman, if I may, you know, a subject that is near and dear to my heart, we have talked about in previous hearings on this particular subject matter, but, you know, I have experienced this in my own family, so I think I am not a subject matter expert by any means, but I am a parent and now a grandparent, and it scares me the message that we are sending to future generations out here—and I am not saying the office is sending, I am just saying the message the country is sending—that some of these things that we know with empirical data are putting our kids on a bad path that we are now saying it is really okay. Look at what is going on in Colorado and Washington, legalization; that we are basically promoting almost in some remark—in some categories, we are almost promoting the fact that this is something you can do without any known consequences down the road, and I am deeply worried about that as a parent, and now as a grandparent, and certainly as a Member of Congress whose job it is to look out for the welfare of this country. It doesn't require a response, I just wanted to say that and let you know that it has my attention.

I yield back my time.

Mr. CRENSHAW. Thank you.

Mr. Diaz-Balart.

Mr. DIAZ-BALART. Thank you very much, Mr. Chairman.

Thanks for being here, sir. You were very clear about your statement about, you know, your concerns, right, of use and expanding use of marijuana. And going to the statement that my colleague just mentioned, that mixed message, by the way, is not only heard in the country, it is also heard from our allies. I get it all the time when I travel abroad to Latin America. You know, our allies, those who are putting the resources and the blood to try to stop drug production, Congressman, they are asking me, you know, why are we doing this if in the United States there is this kind of this mixed message? So your message today was very clear.

Let me ask you a simple question: Isn't marijuana outlawed by Federal law? I mean, I think it is.

Mr. BOTTICELLI. Correct.

Mr. DIAZ-BALART. Okay. So here is the question: Have you asked the Attorney General or the President to just enforce Federal law? In other words, I understand you have serious concerns. Your job is to protect the people from drugs, including marijuana that you have serious concerns about. Have you asked the administration to just enforce Federal law? Because if it is so problematic, which you have said it is, and we all have our opinions on that, but clearly, you know, you are an expert on this, and you speak for the administration on this, have you asked the President to enforce Federal law? Have you asked the Attorney General to not just sit back and wait to see what happens in Colorado, but to enforce current Federal law?

Mr. BOTTICELLI. I think what the Department of Justice has stated is that, given limited Federal law enforcement priorities, that they are going to reserve their Federal law enforcement actions at the most significant crimes associated with marijuana and not go after people who are using it for personal use. But, again, I think that they have reserved the right to go back—

Mr. DIAZ-BALART. Well, have you asked? Have you asked the Attorney General or the President, have you said, this is a big issue, this is an important issue you see as a health hazard, you see it as a problem? You know, clearly we are spending a lot of money, as we should, to try to make sure that kids don't smoke tobacco—I don't want my kid to smoke tobacco—and yet have you asked—has that been one of your priorities? Have you said to the Attorney General and the President, I think this is a bad idea, I think is dangerous, I think this is harmful, and I think we should enforce Federal law?

Mr. BOTTICELLI. During the course of the development process, obviously we had the opportunity to talk to the Department of Justice in terms of those issues. I think what we have agreed to going forward is, again, given what the Department of Justice has issued, an engagement with the Department of Justice to monitor the data at the Federal, local and State levels to see what the impact is, give that information to the Department of Justice with their opportunity to look at taking subsequent action should we see enhanced public safety and public health effects as it relates to Colorado and Washington.

Mr. DIAZ-BALART. So it was kind of an end-around question, and, you know, I am not going to further press you, because I don't want to put you at odds with the administration. However, it seems to me that part of the mixed message is coming, frankly, not from you, sir, but from the administration, because we have you saying this is a bad deal, this is bad for public policy and public health, and then you have, frankly, the Attorney General and others saying, you know, we are going to monitor, we are going to see how it goes, it is not that dangerous. I saw the President saying, yeah, it is probably not healthy, but it is not that bad. And I am paraphrasing; please don't quote me on that one. It is not a direct quote nor an accurate, because I was paraphrasing it.

So, again, those are the mixed messages, by the way, that our allies are constantly complaining about, that we are giving mixed messages to our allies. We are also giving mixed messages, I think, to the American people. And I think I would like for one, sir, to have what is the policy of—what is our policy? Is marijuana illegal? Is it harmful? And if it is, what serious concrete steps—and to the point where we should continue to press our allies around the world, particularly in this hemisphere, to do what they are doing in this very painful battle against it, and if not, what should the policy be? And I think that mixed message is something that I hope you all kind of take back and realize that it is there not only for the American people, for our allies.

Second point, if I have any time, Mr. Chairman, going back to Mr. Serrano's question, and I commend him for always bringing that up. You know, recently, for example, I mentioned how our allies are confused at best as to the mixed messages that are coming

from the administration and from the States; and it is not only the administration, from the country. But then you have others who do not have mixed messages. You have the head of the Ecuadorean Government Mr. Correa that kicked the DEA out of the country. In Bolivia, Evo Morales has said, you know, that clearly their country is better off without the DEA.

General Kelly, who is the Commander of the SOUTHCOM, by the way, located in the congressional district that I represent, he recently testified in front of the Senate Armed Services Committee that—and he was very blunt—that he believes that we are currently only stopping—and I know that Mr. Serrano, this is not going to shock him, but it is not going to please him—only catching about 20 percent of the drugs being trafficked into the United States, and it is an issue there of resources.

Do you have coordination with SOUTHCOM? And as far as on the budgetary aspect of it, how much coordination is there? Are you consulted at all? What is that role?

Mr. BOTTICELLI. Sure. As part of our statutory authority in terms of looking at the totality of the drug control budget, clearly we work with DOD, the Coast Guard and others in terms of our interdiction, part of our ongoing supply-reduction strategy. I actually had the opportunity to go down to SOUTHCOM and to talk to General Kelly and to see some of the work that he has been doing and to hear some of his concerns.

Again, interdiction is part of our core supply reduction strategy, and we consider it very important. And we—has been a significant amount of discussion both with General Kelly as well as the interdiction community through our Interdiction Committee work to look at available resources, to look at operational efficiencies that we can achieve in terms of meeting our goals of interdicting as many drugs as possible.

So clearly, we have been taking a leading role with the military and with all of our interagency partners to look at, in light of the fiscal issues that we have here, how do we continue to meet our goals around supply reduction and interdiction.

Mr. DIAZ-BALART. And that is one that we can get a big bang for the buck.

Mr. BOTTICELLI. I would agree. You know, I think that when we see large-scale removal of drugs that don't come into our country—we know, again, from a prevention perspective, that the more drugs that are available in the community, the more likely that we have people that are likely to use them. So clearly these are complementary strategies both in terms of our supply-reduction and demand-reduction strategy.

Mr. DIAZ-BALART. Thank you.

Mr. BOTTICELLI. So they are important goals.

Mr. DIAZ-BALART. Thank you.

Thank you, Mr. Chairman, for you allowing me.

Mr. CRENSHAW. Certainly.

Mr. DIAZ-BALART. And just very briefly also, Director, again, that mixed message is really intense, and it is real deep. And I don't want to bust your chops, but I think we have heard it here today.

Mr. BOTTICELLI. Okay.

Mr. DIAZ-BALART. I mean, we really have. I mean, you have been clear about the effects and what your concerns are. On the other side of the same administration, you know, there is the lack of willingness to enforce current Federal law. Now, if the Federal law is wrong, and if marijuana is not a big deal, then we should have that discussion, and the President should be upfront and say, let's debate that. But right now all we are getting is mixed messages, and I think our allies hear that, those who are fighting narcotrafficking drugs are hearing that, and our kids are hearing that, and that is probably the most dangerous part of it.

Mr. BOTTICELLI. To be fair, Congressman, I think both the President and the Department of Justice have indicated their significant concern around the public health impact. So I think we have to clarify law enforcement issues versus public health and public safety, but thank you for your comments.

Mr. DIAZ-BALART. Thank you, sir.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman.

Mr. Director, thank you for being here, and thank you for what you do. I couldn't imagine the burden that you carry each day on your shoulders, and it is a very noble, noble cause, and I know that we have our questions and concerns and such.

And I didn't really intend to speak on the topic that the two gentlemen before me had, but I was shocked at the statistic that you shared momentarily, and it is in your statement, you said it here as well, that more 12th graders today now smoke marijuana than cigarettes, and I think we were all shocked to hear that. And I heard about mixed messages and you suggesting that it is because they sense that marijuana has less consequences, fewer consequences than cigarettes.

And it was just less than 60 days ago the President, I think, sent some confusing messages to the youth across the country. And, you know, his quote was well documented, and he even says, as it has been well documented, I smoked pot as a kid, and I view it as a bad habit and a vice, not very different from cigarettes that I smoked as a young person up through a big chunk of my adult life. This was in the New Yorker. And you thought he would stop there, but then he said, I don't think it is more dangerous than alcohol. And, I mean, that probably bothered you, I would imagine, because I know you take your job very seriously.

Did that make your job easier or more difficult? And did you just, with some sort of internal frustration, go into the President's office and say, what are you doing here? You are making my job extremely more difficult and challenging. And what was your response to that? Could you share that with the committee?

Mr. BOTTICELLI. I think if you look at the totality of the President's comments and subsequent comments that he made, I think that a lot of what he was referring to is some of the inequity and disparities in sentencing that we see for marijuana, particularly among people of color, which is an issue, obviously, not just for our Office, but for him and the Attorney General's Office as well. So, you know, I think the President has repeatedly raised—

Mr. GRAVES. Do you suspect that is how the youth interpreted his comments? And maybe you are right in totality that is what he was thinking and suggesting, but the youth of our country, I think they probably heard, I don't think marijuana is more dangerous than alcohol. And almost it is just a, I don't know, an odd statement and such.

Mr. BOTTICELLI. You know, again, I go back to looking at some comments that he made subsequent to those in terms of really understanding the significant public health consequences both for alcohol and for marijuana, and not necessarily endorsing what was happening in Colorado and Washington, and saying that we really have to be vigilant in terms of keeping this as a public health priority. So—

Mr. GRAVES. Well, and I don't mean to interrupt, but, I mean, I took it as a little flippant in how he—you know, off the cuff, and maybe he was caught off guard with that question and he wasn't prepared. But he is the President of the United States, and I know that he gets difficult questions all the time, and this one couldn't have been all that difficult, but has he since then come forward and with remorse said, you know, I made a mistake; I shouldn't have done that as a youth? And, you know, just as all of us at some point have done things that we regret, has he ever expressed any regrets for that, or did he just allow the comments to hang and dangle, and everybody hoped it was about sentencing?

Mr. BOTTICELLI. No. I think that he made some subsequent comments after that relative to understanding that this was a significant public health and public safety issue.

You know, the President is not unlike many parents who used substances in their youth to great regret. And I think the best thing we can do is be honest and candid about it and say that we don't support that for our kids, as he talked about in not supporting it for his daughters.

Mr. GRAVES. Right.

Mr. BOTTICELLI. So, you know, I think that if you look at successful prevention strategies, we need to have those conversations, and we need to be candid as parents, and we need to say to our kids, look, I may have done this, and I may have done okay, but it is—I don't advise it for my kids. And I—

Mr. GRAVES. And I appreciate his candidness and such, and I hope he has taken a statement and suggesting his regret and not encouraging others to do that, and not a statement in which he was saying, I did that, and look at me at what I have been able to accomplish in life, but instead take another position that it was a mistake.

If I could change gears real quick. I met with some sheriffs last week while I was in the district, and we were talking about methamphetamines. And obviously, it has been a very difficult problem in our region in northwest Georgia. They were suggesting that with all the steps we have all taken to try to prevent it, that things have changed, the ingredients are changing, obviously others are finding easier ways to do it, but there is still that lingering problem with drugs coming across the southern border.

Do you sense that our border security is adequate when it comes to not only from the illegal immigration perspective, not asking you

to speak on that, but from an illegal drug perspective crossing our borders? What can be done? Is it adequate, and what more can be done?

Mr. BOTTICELLI. I think you have raised two critical issues here, one in terms of drugs coming in from Mexico and domestic production as well, as well as domestic use. And so I think, you know, we have had significantly enhanced the resources at the border. Part of our concern has been both good and bad in the sense that they have been able to actually seize a tremendous amount of more drugs at the border. Unfortunately, we have seen about a 500 percent increase in methamphetamine seizures at the border.

And I think you are absolutely right that as Mexico has changed in terms of looking at putting controls on precursor chemicals, as the Combat Meth Act in States have enacted, we see different patterns emerging in terms of both production internationally as well as domestically. So previously where we saw large lapses here in the United States, I think some of our laws have made it much, much harder to get large amounts of chemicals, and we are seeing the increase in terms of these very small one-pot labs. Particularly here in the District we have all heard news around that. So it has been clear that this is a public safety and public health issue that we have to look at.

You know, one of the areas that we are examining is we have made some pretty good progress over the past few years in terms of the reduction in methamphetamine use here in the United States, I think largely through our drug prevention and local law enforcement efforts. So we do have a number of programs through our Office that help support reducing the distribution in trafficking largely through a component of our HIDTA programs as well as through our Drug-Free Communities.

So meth is an issue that we have to continue to look at both internationally as well in terms of what we seize from the borders, but also work on domestic production and domestic trafficking, as well as reducing demand for methamphetamine here in the States.

Mr. GRAVES. And I know it is outside of your scope, but from the trafficking, drug trafficking across the border, do you—I mean, are you suggesting that adequate protections are in place now? Is there more that can be done? Any thoughts on that? Are you pleased with the effort there? Because ultimately it impacts your role and what you are going to have to handle.

Mr. BOTTICELLI. I think we have done a significant job in terms of looking at increasing our technology, increasing our information sharing, as well as increasing some of our prevention efforts on both sides of the border. So I think we actually have done a really good job in terms of looking at that.

There is always more work to be done. My former boss is now the Commissioner of Customs and Border Protection, so I am sure that we will have a very good relationship in terms of Customs and Border Patrol, and particularly as it relates to our Southwest border.

Mr. GRAVES. Thank you. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you. And, you know, I share your concern, as well as, I think, everybody on this subcommittee probably is concerned about marijuana and to hear the things that you mentioned.

But I guess the good news is that we can refer everyone to Governor Jerry Brown out in California, who I think said it very succinctly when he said it is hard to have a great State or great Nation when you have got too many people getting stoned, which surprised me to hear him say that, but that is the other side of the coin that probably people need to talk about. I think he talked about you shouldn't have too many potheads. So he is trying to spread the message, I guess, from the other side of the coin.

We have got time for a couple more questions if Members have, but I wanted to ask you on the international scale and then more domestic, but people have talked about Latin America, the Caribbean, the fact that 75 percent of everything comes through. On the other side of the world, there is a place called Afghanistan where they grow poppies. And I remember the first time I went to Afghanistan, there was all the conversation about how are we going to get people to quit growing poppies and grow something else. And that kind of died down, and there was a lot of discussion about that. I was there about 6 weeks ago, and the military was talking about all the great things that have happened in Afghanistan in terms of education, in terms of universities being created, women's rights, women's voting. We didn't really talk much about the whole poppy situation. And then as we prepared for this hearing, it was called to my attention that the poppy production is just ever increasing. Now it is, you know, 5 percent of the GDP.

And I wonder, because you see the impact when these drugs, whether they are from Latin America or the Caribbean, or whether they are from Afghanistan, when they kind of hit the ground here, the terrible impact they have. Do you work with them, and are those things that are still being talked about in terms of maybe how you slow down that production there? And do you coordinate with the Department of Defense at all? Could you touch a little bit on the whole poppy situation?

Mr. BOTTICELLI. Sure. You know, clearly the situation in terms of poppy cultivation in Afghanistan has been a significant concern, and I think you are right that we have seen year after year increases in terms of poppy cultivation and, you know, have some significant concern in terms of what that might mean.

We are not seeing kind of widespread heroin trafficking into the United States from Afghanistan, but clearly as it relates to the instability within the country and the money that it generates in terms of the insurgency, I think that is a particular problem.

We work with the Department of Defense as well as the Department of State in terms of looking at how do we continue to aid counternarcotics efforts in Afghanistan. Clearly the next few months in terms of the election there as well as what are going to be resources after troop pullout is of particular concern in terms of looking at those issues of both poppy eradication, but as well as alternative development to take the place of those poppies.

You know, with that said, it doesn't diminish in terms of what we are anticipating for our counternarcotics efforts. We are looking to continue priorities that provide training and technical assistance to the counternarcotics police of Afghanistan as well as vetted units within the Afghan drug law enforcement, as well as investing in institutional sustainability and capacity building within the ministry

of counternarcotics. So these are largely efforts through our Department of State and their international law enforcement division. So clearly this is an issue that is of significant concern for us now and going forward.

Mr. CRENSHAW. Well, thank you. And let me now ask you about a more domestic problem; that is, methamphetamines. And as I understand it, you know, it is very addictive, it is cheap, it is kind of becoming the drug of choice. And maybe you could tell us what you see the trends are in terms of the use and abuse of that, talk about what you all are doing to try to counter the production and the use of that, and then do you need anything more in terms of tools that you can use, because, as I understand it, that is really one of the most serious things we are facing today.

Mr. BOTTICELLI. Great. Thank you. And I appreciate the offer.

So, as we indicated, we have seen significant increase in seizures of methamphetamine at our southern border as well as an increase in domestic production, and some of the programs that we have from the law enforcement that we have talked about previously through our High Intensity Drug Trafficking Areas.

We also have a national program under our HIDTA program, and that is the National Methamphetamine and Pharmaceuticals Initiative, and that provides regional support through our HIDTAs to look at how do we diminish drug trafficking and production issues particularly for methamphetamine.

You know, again, on the prevention side, you know, we see a variety of resources, our Drug-Free Communities, to look at doing that.

You know, I would be happy to have subsequent conversation with you in terms of what additional things might we have in place beyond just the Combating Meth Act that might hold promise in terms of reducing the availability of some of the precursor chemicals that go into the production. As Congressman Graves pointed out, as we have made changes at both the Federal and State level, there has been, I think, an evolution in both chemicals and production that warrant, additional consideration in terms of how do we continue to do everything that we can, from both a supply reduction and a demand reduction standpoint, to reduce those issues.

I also think, too, that when we look at methamphetamine, that we have some significant parts of the country that are more affected than others.

Mr. CRENSHAW. Yeah. I was going to ask you about that. You know, these meth labs that you read about that kind of come and go, where are they going, where are they concentrated today?

Mr. BOTTICELLI. You know, I think that the biggest impact that we see in terms of methamphetamine, and this is not to say that we don't see it in rural pockets around other areas, but when you look at kind of the regional impact, I think that is particularly in the South—or particularly in the South and the West is where we see significant impact from methamphetamine.

I came from the Northeast, where we had a big heroin problem and very little meth problem. So we have different parts of the country that I think are differentially impacted by methamphetamine both in terms of production and use.

Mr. CRENSHAW. Is it hard to set up a meth lab? I mean, like, you go to Colombia and see it is pretty—you go out in the jungle and make cocaine. I mean, is it something somebody can set up, make meth, and if somebody comes, they go somewhere else? I mean, how complicated is it?

Mr. BOTTICELLI. In the spirit of full disclosure, I don't think I am really fluent other than watching "Breaking Bad." I don't think I really know the technical capabilities to do it.

My understanding is that it is not tremendously complicated, and that is why we are seeing the development of some of these one-pot labs in terms of both the chemicals that are available as well as the process.

That said, people who are doing production are not necessarily tremendously skilled at it, and we see some devastating environmental impact, drug-endangered children as it relates to it.

So, I don't think that it is technically tremendously difficult to do. And, again, I think as we have put certain controls on certain of the chemicals, precursors, that we have seen an evolution in terms of—

Mr. CRENSHAW. Would you say is it the fastest growing? I mean, it used to be crack cocaine. I mean, how does meth rank in terms of abuse and potential for abuse? Because I always understood it was just so cheap and so, you know, available that it was one of the fastest-growing problems you are facing.

Mr. BOTTICELLI. Again, I think we have to continue to monitor the impact of the production, because what we have seen, quite honestly, over the past several years has been a reduction in meth use. And, again, that is probably differential in different parts of the country, but we have seen some decline in methamphetamine use.

I think we would be well advised in terms of looking at both the production and the interdiction around our meth use, as well as some early indications that we are seeing more emergency department mentions, an uptick in emergency department mentions, for methamphetamine. So I think we have to pay close attention on both the regional and the national level in terms of those issues.

You know, one of the issues that we talked about before, in terms of magnitude of order, has been the prescription drug abuse and the opioid epidemic that we are seeing nationally. That is clearly an issue that is a high priority for us, as well as continuing to monitor what is happening with other drug-use trends.

Mr. CRENSHAW. Gotcha.

Mr. Serrano.

Mr. SERRANO. I am not doing well today. Either you are asking my questions, or he is answering my questions before I ask them.

Mr. BOTTICELLI. I hope it is the latter, Congressman.

Mr. SERRANO. It is both. It is both.

So I want to talk to you about the prescription drug abuse. What are you specifically proposing to do to reduce the misuse of the prescription drugs? And also, how have past efforts—what have they shown, and how do we integrate them into what we want to do now? And, lastly, I know that 49 States that have laws authorizing prescription drug monitoring programs, or PDMPs. Are they all functioning or just some of them?

Mr. BOTTICELLI. Sure. So in 2011, ONDCP coordinated an inter-agency effort among our Federal partners and released a plan to reduce prescription drug abuse, and that has four main pillars. One is education, educating prescribers. And what we have seen is as the number of prescriptions for prescription painkillers has increased, so has the consequence of doing that.

It entails proper monitoring, as you alluded to, making sure that we have good prescription drug monitoring programs.

It requires and focuses on safe disposal. One of the things that we see is, particularly for occasional users, about 70 percent of people who use those medications occasionally are getting them free from friends and family. So how do we get those drugs out of the supply chain? And so we are working on safe disposal.

And then the last one is around good laws to make sure that we eliminating pill mills and doctor shopping.

As you talked about, one of the central components of what we have been proposing is making sure that we have good prescription drug monitoring programs. And we have 49 States that now have prescription drug monitoring programs and have been working to make sure that all of them are implementing best practices in terms of those.

And I think there is probably no better example than what happened in Florida that had—the Congressman and I were talking about this in terms of implementing strong prescription drug monitoring programs and enacting strong legislation. And what we have seen in Florida is a significant decrease in the number of prescriptions, prescription painkillers, and I think probably most importantly a significant reduction in drug overdose deaths associated with those.

So clearly having vibrant programs are important to us, as well as having programs that share information across State borders to make sure that as Florida implements good and sound policies, that people are not just moving to Georgia to focus on it. So it has clearly been one of the top priorities of our office in terms of this whole-of-government effort across our Federal partners to minimize the impact of prescription drug abuse.

Mr. SERRANO. Yeah. I should tell you that on social media this afternoon, after announcing that I would be attending this hearing, the number one question asked by about six, seven people, which is usually an indication of many others who want to ask the same question, was about the overdose issue. And so with that in mind, I would like to get you on the record just for clarification. When we talk about prescription drug abuse, are we talking about all prescription drugs, or are we basically saying that the problem is painkillers?

Mr. BOTTICELLI. We are chiefly talking about prescription pain medication. That is really—

Mr. SERRANO. Okay.

Mr. BOTTICELLI. That is really the issue. You know, as—

Mr. SERRANO. Because, I mean, for people who are on, for instance, cholesterol medication or high blood pressure, they are on for the rest of their lives.

Mr. BOTTICELLI. And I think we want them to probably stay on those medications.

Mr. SERRANO. Exactly.

Mr. BOTTICELLI. You know, I think the concern is particularly that physicians get very, very little training around the risks associated with these very powerful pain medications, as well as little training on how to identify substance use disorders in their population. So that is why prescribing, and particularly mandatory education on prescribing, for physicians is really important to the work that we do.

As you indicated, the magnitude of the drug overdose deaths is really astounding to our office. And in 2010, we had over 16,600 prescription-pain-related overdose deaths in the United States. That is 100 people a day who are dying from prescription pain medication overdoses.

And our Office has been working with Federal, State and local folks to implement naloxone distribution programs. And naloxone is a very safe, effective, nontoxic substance that emergency responders have been using for decades to reverse an overdose. And we have been very heartened in terms of the number of States that have enacted naloxone distribution programs throughout the country. It is really remarkable. It is a really miraculous drug in terms of its ability to save lives.

Mr. SERRANO. Let me ask you one more question. And then, Mr. Chairman, if we don't have another round or anything, I will just submit a couple questions for the record.

We know we don't have diplomatic relations with the island of Cuba, but in the past we have done immigration work with them. In fact, we do immigration work ongoing. We have done transportation issues in terms of airplanes flying over or not flying certain parts of the Caribbean. We have done hurricane issues, preventing tsunamis—or warning of tsunamis or so on.

Do we have any kind of relationship when it comes to drug issues with the Cuban Government?

Mr. BOTTICELLI. To my knowledge, sir, I don't think we have any ongoing discussions or work with Cuba, but we are happy to discuss with you and your staff kind of what you might be thinking.

Mr. SERRANO. Okay. Because I know a couple of years ago, to my shock, they were willing to accept DEA agents on their turf, if you will, and political pressure from this country stopped that from happening. And I said I was shocked because, you know, basically saying send me agents from your country of any kind of agents, you know, to Cuba was quite a statement. And I know it is not in their best interests to have drugs coming into Cuba, and it is not in our best interests to have drugs coming here.

So I would like to know if, you know, later on, if you could find out, if there has been any talk about that, in the near future. It is probably one of the areas where I think both parties could agree would be of benefit to this country.

Mr. BOTTICELLI. Happy to look into it, sir.

Mr. SERRANO. Thank you.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Mr. Womack.

Mr. WOMACK. Thank you, Mr. Chairman.

Mr. Botticelli, your predecessor, I think, was confirmed at CBP earlier this month; is that right?

Mr. BOTTICELLI. Correct.

Mr. WOMACK. So you have been in your current capacity now as Acting Director—

Mr. BOTTICELLI. Two weeks now.

Mr. WOMACK. For 2 weeks. Okay.

Is it fair to say that you didn't have a lot of input with the President face to face on this particular budget?

Mr. BOTTICELLI. You know, clearly we work with the Administration and through their—

Mr. WOMACK. But you personally. You personally were not face to face with the President on this budget?

Mr. BOTTICELLI. Correct.

Mr. WOMACK. Okay. Have you been invited into the White House, into the Oval Office to talk about the growing problems with substance abuse and the effects, the cascading effects, across society? Have you had an opportunity? Have you been invited? Have you had the opportunity? Can you kind of take me inside the White House and tell me how that conversation is going?

Mr. BOTTICELLI. As part of the Executive Office of the President, we obviously work with the President and the President's advisers in terms of what our policy has been. And—

Mr. WOMACK. I am talking about specifically the President.

Mr. BOTTICELLI. I have not, sir.

Mr. WOMACK. Have not.

Have you been invited?

Mr. BOTTICELLI. I have not, sir.

Mr. WOMACK. Okay. Three hundred eleven million is the budget, the President's budget, for your office?

Mr. BOTTICELLI. For our Office.

Mr. WOMACK. Down from 370-? 360-? Was it 55 million? Was that the difference?

Mr. BOTTICELLI. Correct.

Mr. WOMACK. Okay. That is about a little less than a 20 percent cut. I am going to guess about 17.5, 18 percent cut in your budget.

Do you think that is an adequate reflection of the importance of your office given the fact that you are taking the better part of the 20 percent cut in the President's proposed budget? Do you think that is a reflection of the priorities?

Mr. BOTTICELLI. I think, not just looking at our budget, but if you look at the totality of the National Drug Control Budget, right, so not just ONDCP—

Mr. WOMACK. Which is 20-some billion. I mean, it is a lot of money.

Mr. BOTTICELLI. Right. So if you look at kind of the totality of the resources that the Federal Government has in terms of looking at this issue, we have seen that money increase. And I think what is particularly important in terms of the overall National Drug Control Budget is that we have seen a significant increase in terms of our drug prevention and drug treatment services.

And, again, you know, that if you think about priorities that we are looking at, how do we deal with this as a public health-related issue. And so those dollars have continued to increase in terms of our overall Federal budget for this priority. So I think, Congress-

man, when you look at the entire National Drug Control Budget, you see that it is a priority within the Administration.

Mr. WOMACK. Well, I was reading in your statement that—and these numbers just kind of shocked me to my conscience on the fact that drug overdose deaths now number greater than motor vehicle crashes and greater than gunshot wounds. And so pertaining to the latter, I have sat in a lot of meetings, including the State of the Union Address, where the President talks about pulling out his phone or his pin to do things that Congress is unwilling to do, and he did spend some time talking about school shootings and large-scale casualty operations resulting from guns and this immediate desire to want to do something about gun violence, and yet we are going to cut this particular budget, even though it is the office's budget, by almost 20 percent, and the number of deaths related to drug overdoses in this country is greater than the gunshot wounds.

Mr. BOTTICELLI. Uh-huh.

Mr. WOMACK. So I want to ask again, is this a reflection of where this fits in the national priority as it concerns the administration? And what are you doing, and what do you plan to do, because I am going to give you a break here. You have been there 2 weeks. You have been there since 2012, but in your capacity for 2 weeks. What are you going to say to the President when you have that face-to-face meeting on the policies of this administration as it concerns something that now outnumbers—drug overdoses—now outnumbers gunshot victims?

Mr. BOTTICELLI. I think, again, when you look at some of the new additions in the proposed 2015 budget items, that there are some additional items included in that budget that are specifically focusing on the opioid abuse and the overdose epidemic. So our Substance Abuse and Mental Health Services Administration has an additional \$15 million to get out to States and local communities to particularly focus on prescription drug abuse issues and opioid and overdose issues.

Contained in that budget is also an additional \$10 million for the Centers for Disease Control and Prevention, again, to support State-level actions as it relates to overdose prevention. You know, it has clearly been a priority for our office in terms of promoting overdose education. We worked with a number of Federal partners and nongovernmental partners in terms of continuing to raise awareness around the magnitude of the opioid overdose issue.

So, again, I think that, one of the areas that we see that leads to overdose is untreated addiction. And one of the biggest causes of why people don't get treatment is a lack of insurance. And one of the areas I think that the Affordable Care Act contains is a provision to make sure insurers have to include a benefit for substance use disorder treatment, and that is reflected in the President's budget.

So I think if you look at, again, the commitment to not only expanding access to treatment, but specific vehicles to enhance State-level efforts to reduce the magnitude of the burden, I think that we see some promising proposals.

Mr. WOMACK. I thank the gentleman.

Mr. CRENSHAW. Thank you.

Mr. Diaz-Balart.

Mr. DIAZ-BALART. I was listening to you before, sir, and you were talking about Florida. You know, we would be remiss without thanking Chairman Rogers for—remember how he was so aggressive about the pill mills, and Florida had, frankly, a huge issue there, and so we have seen some good results of that.

Let me just throw out another issue which I know very little about, which is this issue of synthetic marijuana. You know, I saw some things in newscasts recently; I guess there have been some deaths. And I know that our attorney general in the State of Florida has been very aggressive, and as the formula has changed, he is constantly looking at just trying to update that legislation, which is obviously much quicker on the State level than it is here on the Federal level.

Tell me a little bit about your thoughts about that; how big of an issue is it, and, you know, what are your thoughts on that? And then the second question—well, let me just go for that one first, and then we will—

Mr. BOTTICELLI. Sure. So the issue of synthetics has also been a significant concern for us in terms of a number of different areas. So one is often people don't know what they are taking or what they are getting when they take these chemical substances. There is certainly not a consistency in terms of products, in terms of how they are using it. So we have seen some significant issues around those areas.

And so it has really been an issue that we have been trying to kind of focus on. And clearly we have been working with our partners in the DEA in terms of trying to stay on top of scheduling some of these substances. But Congressman, quite honestly, that has been really difficult, because as we continue to schedule more and more of these substances, the chemists always seem to be one step ahead of us in terms of making kind of small tweaks to some of these chemicals to elude some of these scheduling processes. So we have been actually working with the DEA and with the Senate Drug Caucus in terms of are there things that we can continue to do to stay ahead of some of these scheduling issues as it relates to some of these synthetic drugs.

We have also seen and have been having conversations—you know, as States and as Federal Government have implemented strategies—to reduce the sale of these. We see the Internet playing a larger and larger role in terms of where people are getting the substances from. So we have been actually engaged with payment processors, some of the large credit card companies as well as PayPal, to see to what extent can they share information with us as it relates to some of these Internet sites. And they have been, to this point, I think, concerned about the issue and willing to work with us in terms of some of those sites.

So it has been an issue, again, that we continue to look at in terms of those priorities and look at how we can continue to stay on top of some of the emerging issues.

Mr. DIAZ-BALART. I am assuming, because the States do have, I guess, an advantage as far as at least quickness, right—

Mr. BOTTICELLI. Yes.

Mr. DIAZ-BALART [continuing]. Of dealing with some of this, so I am assuming you are—how good is your cooperation with States?

And I guess that is kind of a general question. I am sure some are better than others, I would assume.

Mr. BOTTICELLI. You know, part of—one of our components in ONDCP is our Office of State, Local and Tribal Affairs, and they work pretty closely with our State counterparts both in terms of law enforcement and public health to look at things like model legislation, and model work, and sharing best practices among States. So we actually have, I think, a very good relationship with many of our State counterparts on both the law enforcement and public health sides.

Mr. DIAZ-BALART. If I may, Mr. Chairman, you have been very patient with me, I will be quick on this one.

Going back to the issue of how the Attorney General and the administration is going to be kind of monitoring what is going on in Colorado and elsewhere, as far as you know, is that an informal monitoring? Is there a metrics? In other words, is there a system set up so that they can look at, you know, compare data, et cetera; or is it more of an informal monitoring that they are going to—and if it is a system that is already set up, the metrics, it would be good if some of us—I would be interested in seeing it, and also, you know, how long it is going to be, et cetera. What can you tell me about that?

Mr. BOTTICELLI. Sure. So our Office actually took the lead in convening some of our Federal partners, and we looked at each of the eight Department of Justice criteria as they were laid out, and looked at what are our data sources. And most of these are publicly available data sources that speak to things like diversion to youth and treatment admissions, things like drugged driving and arrests. So we will continue to monitor with our Federal partners those data to look at the picture of what happens with Colorado and Washington.

Mr. DIAZ-BALART. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Well, I have some questions that I will submit for the record. I know Serrano does, as well.

So let me just say in closing, thank you and your staff for what you do. You know, we talk about this fight against drugs, and we refer to it often as a war against drugs. And some people say we are winning, some people say we are not winning, but we are certainly fighting the war.

And drugs, as we all know, have such a terrible impact on our country, whether it is destroying lives, breaking up communities and families, so we want to work with you and your staff to try to win this war, to keep America safe, to keep it healthy. And thank you again for being here today, and we look forward to working with you.

So this meeting is adjourned.

Mr. BOTTICELLI. Thank you.

RESPONSES TO
QUESTIONS SUBMITTED FOR THE RECORD TO
MICHAEL P. BOTTICELLI
ACTING DIRECTOR
OFFICE OF NATIONAL DRUG CONTROL POLICY

FOLLOWING MARCH 24, 2014, HEARING ON
FY 2015 BUDGET REQUEST OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

Questions for the Record Submitted by Chairman Ander Crenshaw

Heroin Use

Recently, Attorney General Holder was quoted calling the surge in heroin abuse “an urgent and growing public health crisis.”

Question: What is ONDCP is doing to combat heroin abuse?

Answer:

The Office of National Drug Control Policy (ONDCP) provides leadership to combat all drug abuse through the following mechanisms:

1. Policy development concerning drug control (e.g., the Administration’s *National Drug Control Strategy* and specific guidance such as the Prescription Drug Abuse Prevention Plan and *National Southwest Border Counternarcotics Strategy*);
2. Promoting drug control activities of Federal partner agencies through interagency working groups and our legislatively mandated Federal budget guidance process;
3. Working to raise awareness throughout the Nation of policies and community needs through events and activities with external partners in government and the community; and
4. ONDCP-funded grant programs (the Drug-Free Communities (DFC) Support Program and the High Intensity Drug Trafficking Areas (HIDTA) Program).

With respect to heroin specifically, recent activity has focused on:

- Surveillance and data analysis by the Centers for Disease Control and Prevention (CDC) and the Substance Abuse and Mental Health Services Administration (SAMHSA) to understand the connection between heroin use and prescription drug abuse; results have been presented at two ONDCP interagency meetings, one on heroin in 2012 and one on data analysis in 2014,
- Primary prevention via the Administration’s Prescription Drug Abuse Prevention Plan.¹

¹ Research shows 80% of those who recently began using heroin had previously used prescription pain relievers nonmedically. Thus ONDCP’s 2011 Prescription Drug Abuse Prevention Plan is not only a plan to decrease

- Implementation of the Prescription Drug Abuse Prevention Plan and the *National Drug Control Strategy* by addressing existing pharmaceutical opioid misuse and the treatment and recovery needs of people with established opioid use disorders (from pharmaceutical opioids or heroin).
- Re-engaging a cross-agency workgroup on addiction treatment with the goal of expanding medication assisted treatment for all people with opioid use disorders;²
- Engaging with stakeholders to combat mortality associated with opioids, including promoting overdose education and naloxone distribution to law enforcement, expanded access to naloxone for people at risk for overdose, as well as support for state-level policies like Good Samaritan laws that will make use of antidotes more likely. For example, ONDCP has worked with the Clinton Global Foundation to expand availability of naloxone and overdose education and has participated in Policy Academies and Webinars hosted by the National Governor's Association, Association of State and Territorial Health Officials, and the Appalachian Regional Commission to support state-level actions to reduce opioid mortality.
- ONDCP will hold a Leadership Meeting on Heroin and Opioids this summer. Its purpose is to raise awareness about opioids including heroin, overdose, and prevention and intervention opportunities to ensure the Federal Government is maximizing its efforts to address problems related to heroin.
- The HIDTA Program supports efforts to reduce heroin use by targeting drug trafficking organizations (DTOs) and criminal groups that distribute heroin, by disrupting the supply of heroin through seizures, and by engaging in heroin prevention efforts. In 2013, more than 41 thousand kilograms (with a wholesale value of more than \$215 million) were removed from the marketplace by HIDTA initiatives.
- In March 2014, the Washington/Baltimore HIDTA sponsored a Regional Heroin Symposium attended by representatives from Washington/Baltimore, New York/New Jersey, Philadelphia/Camden, and Appalachia HDTAs (representing 14 states and the District of Columbia), along with other law enforcement, prevention, treatment and public health professionals. The purpose of the Symposium was to begin the process of creating a regional strategy to address the heroin issue. In addition to enhanced investigative efforts targeting heroin trafficking, other HDTAs are currently planning similar symposiums.
- ONDCP coordinates events at which its Politically Appointed Officials and other staff speak to include where relevant incorporating messaging concerning heroin and overdose prevention. Examples include an Opioid briefing with the National Institute on Drug Abuse (NIDA), remarks on a briefing by the Food and Drug Administration (FDA) introducing the newly approved naloxone autoinjector, briefings for various

prescription drug initiation but also to combat heroin abuse by ultimately decreasing the number of citizens who might eventually try heroin during the course of a growing opioid addiction.

² This represents a severely underutilized avenue for both addressing current heroin use and decreasing the numbers of potential new initiates. The standard of care for opioid use disorders is medication assisted therapy with FDA approved medicines and behavioral therapy. However these medicines are frequently not utilized by treatment providers and some agencies that contract to provide treatment do not support or expressly forbid their use. Thus the goal of the special working group is to examine how Federal government agencies might use payment and policy levers to get many more people into this evidence-based treatment modality for opioid use disorders. Heroin is likely to remain a problem as long as there is a large untreated segment of the population dependent on opioids.

congressional staffers, roundtables with mayors, congressional representatives, and senators in their home districts, and keynotes at various regional and national conferences, most recently at Operation UNITE's National Prescription Drug Abuse Summit involving the Georgia Governor, Chairman Hal Rogers and other political, scientific and advocacy leaders.

ONDCP also administers the Drug-Free Communities (DFC) Support Program, a Federal grant program that funds community-based coalitions which seek to prevent youth substance use. Since local drug problems require local solutions, community coalitions are best able to create community change. With respect to the abuse of prescription drugs, the broad availability of these drugs combined with misperceptions about their dangers is an alarming combination. DFC-funded coalitions are expected to work with youth, parents, schools, law enforcement, business professionals, media, local, state and tribal government, and other community members to identify and address local youth substance use problems and create sustainable community-level change. Through the use of environmental prevention strategies, DFC coalitions use comprehensive approaches to address prescription drug abuse such as raising awareness for prescribers, parents, and youth; organizing prescription drug take back events; and developing systems for safe disposal of prescription drugs. DFC grantees have identified prescription drug abuse as a priority for their coalitions.

Question: Can you explain why heroin abuse has increased so much in recent years?

Answer: The 2012 National Survey on Drug Use and Health indicates that the number of past year users of heroin was stable over the period 2002 through 2008 at around 300,000 to 500,000.³ Since 2009, the number of such users has risen to about 669,000.⁴ This is a doubling in a relatively short period of time. The rate of past-year heroin use among people 12 years and older is less than (0.3% of the U.S. population) the rates for other drugs such as marijuana (12.1%) and prescription pain relievers (4.8%).⁵

One reason for the uptick in heroin use is that many who have used prescription pain relievers nonmedically have developed severe opioid dependence. Heroin and prescription pain relievers activate some of the same brain regions related to drug consumption. Therefore, people who are misusing or dependent on prescription drugs can obtain some of the same effects from heroin.⁶

³ Substance Abuse and Mental Health Services Administration, Results from the 2012 National Survey on Drug Use and Health: Summary of National Findings, NSDUH Series H-46, HHS Publication No. (SMA) 13-4795. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013. Figure 2.4 Past Month and Past Year Heroin Use among Persons Aged 12 or Older: 2002-2012

⁴ *ibid*

⁵ Substance Abuse and Mental Health Services Administration, Results from the 2012 National Survey on Drug Use and Health: Summary of National Findings, NSDUH Series H-46, HHS Publication No. (SMA) 13-4795. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013.

⁶ Comer, SD, Sullivan, MA, Whittington, RA, Vosburg, SK, and Kowalczyk, WJ. Relative abuse liability of prescription opioids compared to heroin in morphine-maintained heroin abusers. *Neuropharmacology* Apr 2008; 33(5): 1179-1191. Available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3787689/>

Patients who have transitioned reported trying heroin because they believe it will enable them to achieve higher levels of euphoria, it is more accessible, it costs less, or because of ease of use.⁷

Research shows the development/natural course of an opioid use disorder generally follows a typical pattern that can involve exposure to the drug followed by changes in the method of administration, dose, or drug potency. These alterations increase the rewarding effects, prompting some people to eventually move from occasional to routine use and in some cases dependence on opioids. In individuals with severe opioid use disorders, continuous opioid use is necessary to stave off a withdrawal syndrome characterized by extreme flu-like illness and anxiety which make daily activities, such as employment, difficult. In these cases, illicit opioids such as heroin can substitute pharmacologically for prescription opioids. As opioid use escalates or becomes chronic, users experience financial pressure. Users in the midst of withdrawal are highly motivated to eliminate these symptoms of “dope-sickness,” and if their drug of choice is not available through their usual source, research shows they try heroin despite their awareness of the danger, its addictiveness, and its potential to lead to injection and viral disease.⁸

Typically, in a given year the majority of dependent prescription opioid misusers do not receive treatment for their problem,⁹ leaving them vulnerable to continued escalation in use, including possibly transitioning to heroin.

Studies show prescription opioid dealers frequently deal heroin in addition to prescription pills.^{10,11} Additionally, studies have shown heroin users report transitioning because heroin is much less expensive than prescription opioids.^{12, 13} Approximately 4 percent of prescription opioid users over a five-year period initiate heroin use and for most people there is a substantial amount of time between onset of opioid misuse and heroin initiation.¹⁴ Underutilization of treatment and a lack of systems and incentives to proactively identify and refer prescription drug misusing patients for intervention prior to heroin initiation contributes to this problem. The

⁷ Cicero TJ, Ellis MS, Surratt HL, Kurtz SP. The Changing Face of Heroin Use in the United States: A Retrospective Analysis of the Past 50 Years. *JAMA Psychiatry*. Published online May 28, 2014. doi:10.1001/jamapsychiatry.2014.366.

⁸ Mars SG, Bourgois P, Karandinos G, Montero F, Ciccarone D. Every ‘never’ I ever said came true”: transitions from opioid pills to heroin injecting. *Int J Drug Policy*. 2014 Mar;25(2):257-66. doi: 10.1016/j.drugpo.2013.10.004. Epub 2013 Oct 19. PMID: 24238956

⁹ SAMHSA, 2012 National Survey on Drug Use and Health (March, 2014) special analysis.

¹⁰ Mars SG, Bourgois P, Karandinos G, Montero F, Ciccarone D. Every ‘never’ I ever said came true”: transitions from opioid pills to heroin injecting. *Int J Drug Policy*. 2014 Mar;25(2):257-66. doi: 10.1016/j.drugpo.2013.10.004. Epub 2013 Oct 19. PMID: 24238956

¹¹ Inciardi JA, Surratt HL, Cicero TJ, Beard RA. Prescription opioid abuse and diversion in an urban community: the results of an ultrarapid assessment. *Pain Med*. 2009 Apr;10(3):537-48. doi: 10.1111/j.1526-4637.2009.00603.x. PMID: 19416440

¹² Cicero TJ, Ellis MS, Surratt HL, Kurtz SP. The Changing Face of Heroin Use in the United States: A Retrospective Analysis of the Past 50 Years. *JAMA Psychiatry*. Published online May 28, 2014. doi:10.1001/jamapsychiatry.2014.366.

¹³ Inciardi JA, Surratt HL, Cicero TJ, Beard RA. Prescription opioid abuse and diversion in an urban community: the results of an ultrarapid assessment. *Pain Med*. 2009 Apr;10(3):537-48. doi: 10.1111/j.1526-4637.2009.00603.x. PMID: 19416440

¹⁴ SAMHSA unpublished analyses of Lifetime Heroin Use In a Cohort of NMPR Initiates Aged 12-49 Who Never Used Heroin* Prior to NMPR Initiation, by Length of Time from First NMPR Use: 2005-2012 based on National Survey on Drug Use and Health Slides at Request of ONDCP.

National Survey on Drug Use and Health shows most patients with opioid dependence do not receive treatment,¹⁵ and most state as their reason that they did not believe treatment would help or they did not think they had a problem.

Question: How can we educate and prevent future Americans from becoming addicted?

Answer:

ONDCP has developed a comprehensive approach to prevent, treat, and support recovery for people suffering from substance use disorders. Some specific ways to prevent individuals from developing these disorders include:

1. Investing in primary prevention and facilitation of healthy lifestyles and communities that reduce the opportunities for drug use through school-based prevention.
2. Using social media and other community oriented prevention efforts like the *Above the Influence* media campaign and the DFC Support Program.
3. Educating the public including parents and youth about the highly addictive nature of prescription medicines when misused and the risks of heroin initiation in opioid misusers.
4. Requiring education for medical and health professional school attendees and testing on licensure exams.
5. Requiring continuing education for licensed prescribers so they will:
 - a. Prevent misuse and diversion in their own practices (e.g., by checking the prescription drug monitoring program (PDMP), using confirmatory testing; prescribing medicines that are abuse deterrent when available, warn patients of risk of dependence, diversion, and instruct them on proper storage and disposal; provide only the minimum dose needed for the condition; only prescribe for conditions where the evidence supports opioid use; offer overdose prevention counseling and naloxone prescriptions)
 - b. Identify and treat or refer people with existing or suspected substance use disorders to treatment (e.g., by use of PDMPs, screening, and brief therapy, offering integrated medication assisted therapy in their offices.)
5. Expanding access to addiction treatment for existing prescription opioid users, so they do not transition to heroin and raising awareness about options for these treatments to those in a position to make referral or pay for treatment.
6. Decreasing the supply of heroin through supply-side measures.

Zohydro ER

The Centers for Disease Control and Prevention has classified prescription drug abuse as an epidemic. For the past decade, Federal, State and local law enforcement have made significant steps forward in combating the prescription drug abuse problem in this country. My home state of Florida, as well as the Chairman's home state of Kentucky, have benefitted significantly from these efforts.

¹⁵ SAMHSA special analysis, 2012 National Survey on Drug Use and Health (March, 2014).

However, I have heard concerns that the Food and Drug Administration (FDA) approved Zohydro ER (extended release) last October. I understand that it has no abuse-deterrent features, and can be chewed, snorted, or injected by addicts to deliver a powerful dose of hydrocodone and a high on par with heroin.

Apparently law enforcement officials raised concerns about this drug and its potential for abuse, but the FDA still approved it.

Question: What is ONDCP doing about prescription drug abuse and are you concerned that Zohydro could easily be abused?

Answer:

The Administration developed a four part plan to address prescription drug abuse. The plan includes the following:

- Education. A crucial first step in tackling the problem of prescription drug abuse is to educate parents, youth, and patients about the dangers of abusing prescription drugs, while requiring prescribers to receive education on the appropriate and safe use, and proper storage and disposal of prescription drugs.
- Monitoring. Implement PDMPs in every state and enhance PDMPs to enable data sharing across state lines and maximize their use by healthcare providers.
- Proper Medication Disposal. Develop convenient and environmentally responsible prescription drug disposal programs to decrease the supply of unused prescription drugs in the home.
- Enforcement. Provide law enforcement with the tools necessary to eliminate improper prescribing practices and stop pill mills.

ONDCP also works with stakeholder groups such as the National Governors Association, the Association of State and Territorial Health Officials and other professional organizations and relevant physician groups. Much of our work has involved providing technical assistance for policy academies and webinars and other awareness raising events so state officials and relevant professionals can learn about the Plan and *Strategy*, and where appropriate adopt or adapt the national *Strategy* to fit their local needs.

We are also working to expand access to naloxone, an opioid overdose antidote, and overdose education. For example, we are participating in the Clinton Global Health Foundation's new effort to expand the use of naloxone, and Acting Director Botticelli recently participated in a webinar hosted by the American College of Emergency Physicians on efforts to address overdose through prescribing naloxone to at-risk patients in emergency departments. ONDCP is particularly focused on expanding access to naloxone to first responders (law enforcement and fire fighters) since they are likely first on the scene to an overdose and are more likely to be in rural parts of the country where overdose is also common. The New York HIDTA recently gave a grant to Staten Island NY police department to expand naloxone access to all of their police officers.

ONDCP coordinates Federal work on drug control through our interagency meeting process. Also, by providing Federal agencies with drug budget oversight and guidance during the budget development process, we direct agencies to use their resources to engage in activities that address prescription drug abuse. Abuse deterrent technologies are a part of this.

As part of the *Prescription Drug Abuse Prevention Plan*, the Administration supports research and development activities related to treatments for pain with no abuse potential and the development of abuse-deterrent formulations of opioid medications and other drugs with less abuse potential. The FDA recently issued a draft guidance document that addresses research and labeling issues related to the development of abuse-deterrent formulations, thereby assisting industry in developing new formulations that promise to help reduce the prescription drug abuse epidemic in the United States. ONDCP has also worked through interagency meetings and the budget development process to direct the development of abuse-deterrent technologies.

ONDCP recognizes that most opioids, even many with abuse deterrent technologies, can be abused and Zohydro is no exception. The FDA has ordered post-marketing studies on Zohydro and other long-acting opioids. If post-marketing data suggests the need, FDA can, at any time, add additional requirements to its Risk Mitigation and Evaluation Strategy to cover this drug or others in its class as new information about risks comes to light.

Question: As the White House official coordinating drug policy across the Federal government, how do you ensure that FDA and DEA work together on new drug approvals to ensure that high risk drugs are appropriately controlled?

Answer: ONDCP coordinates drug policy across the Federal Government through three mechanisms. First, it uses its interagency working groups to bring agencies together around specific issues. For example, ONDCP convenes a workgroup on the *National Drug Control Strategy* each year. It holds working groups on prescription drug abuse prevention approximately three times per year. FDA and DEA have an opportunity to interact at these meetings and plan for dealing with emerging issues.

Second, ONDCP uses its budget guidance/certification process to coordinate activities by Federal agencies with drug budgets. Each year the ONDCP Director (or his designee) meets with each agency principal or designee concerning national drug control needs the agency will be expected to address. Following these discussions, ONDCP issues written budget guidance letters. Once ONDCP receives the Department's budget submission, it reviews them to determine if they are adequate to implement the goals and objectives of the *Strategy*. The Director of ONDCP then issues a written notice to the Department head certifying the adequacy of their budget submission to implement the goals and objectives of the *Strategy*.

Finally, Federal agencies also are responsible for working on *Strategy* and other policy plan priorities. Some of these are relevant to new drug approval priorities. For example, the *Prescription Drug Abuse Prevention Plan* contains an action item for HHS to

expedite research on abuse deterrent formulations of medicines for pain; FDA has the lead responsibility for implementing that item. ONDCP works with agencies on general issues of policy, however the Office does not interfere in specific regulatory proceedings to maintain the integrity of the process.

Question: If FDA knew there was a potential for abuse, why do you believe they approved Zohydro?

Answer: The U.S. system of drug control was developed so that there would be a process to ensure that drugs with abuse potential and no demonstrated medical use would be kept out of the hands of consumers, but drugs with potential for abuse could be approved, marketed, and used reasonably safely, with minimal concerns about safety or diversion.

Zohydro was approved by the FDA because it met the current regulatory requirements for approval of a new drug, and the FDA concluded that the benefits of the drug's availability would outweigh the potential harms if it was marketed within their constraints. These constraints include following the requirements outlined by the Risk Evaluation and Mitigation Strategy plan for extended release/long acting opioids as well as restrictions on schedule II substances such as no refills and limits on the number of prescriptions that can be written in advance to be filled on a future date.

Question: What incentives do pharmaceutical companies have to invest in the development of new abuse deterrent technologies?

Answer: In 2013, FDA released Draft Guidance for Industry¹⁶ outlining the various safety labeling indications for which abuse deterrent opioids might be eligible. This document also outlines the evaluation process to obtain such labeling. Having a safety indication on a drug can mean prescribers prescribe or use the drug more than competitors. It may also mean that payers give priority to the drug on formularies. In some cases, it may provide additional patent protection from generic competition. Abuse deterrent technologies that can be added to entire classes of drugs or across multiple drug classes may be worth investment because of their potential application to many drugs. We acknowledge that the pharmaceutical industry is driven by the ability to make a good business case for drug discovery efforts. Therefore, the large upfront costs without a guarantee of approval may discourage some, especially small biotech companies from investing in innovations which theoretically could have enormous public health benefits. Opportunities exist for government investment through programs offered by the National Institutes of Health's Small Business Program. NIH recently issued a request for applications¹⁷ on this topic with a 2014 set aside of 3 million dollars for up to 9 awards with an option for up to 1.5 million dollars available per grant in award round second round if phase I projects are successful.¹⁸ The awards are due to be made sometime after this month. <http://grants.nih.gov/grants/guide/rfa-files/RFA-DA-14-013.html>.

¹⁶ Guidance for Industry: Abuse-Deterrent Opioids – Evaluation and Labeling. Linked to 4-30-2014 available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM334743.pdf>

¹⁷ RFA DA-14-013 can be found at <http://grants.nih.gov/grants/guide/rfa-files/RFA-DA-14-013.html> linked to on 5-6-2014

¹⁸ Pending funding availability at the institution.

Substance Abuse and Veterans

Since 2002, substance abuse in veterans has seen a steady climb. It is estimated that in fiscal year 2013 about 8.8% of patients from the Veterans Health Administration suffer from either drug or alcohol abuse. Studies have also shown that although illicit drug use remains low among active duty members, probable alcohol abuse is very likely.

Question: How are you coordinating with the Department of Defense to prevent and treat alcohol abuse among active duty soldiers?

Answer: ONDCP's Office of Demand Reduction coordinates with the Department of Defense (DoD) on drug prevention efforts (including drug testing) and has worked with the individual military services on their alcohol and drug abuse prevention efforts (to include the National Guard and the Department of Homeland Security's U.S. Coast Guard). Besides programs focusing on active duty and Reserve/Guard personnel, ONDCP also works with the DoD's efforts to support military families, including coordination with the Department of Defense Education Activity (DoDEA) schools, to incorporate appropriate prevention programs with youth around substance abuse prevention month.

Question: How do we make sure when our service members come back home that they do not succumb to drug abuse and possibly ultimately addiction?

Answer: All of the necessary supports should be available to service members and their families including easy access to comprehensive mental health and substance use disorder services, from prevention and early intervention, to treatment including medication assisted treatment for opioid disorders, and recovery support services. ONDCP has coordinated with DoD to integrate evidence-based approaches for early intervention and treatment into DoD health centers and Tricare providers for service members and their families. Because service members are at risk of physical and psychological trauma, and thus face a high likelihood of being prescribed opioids and other medicines with abuse potential, it is important to train the DoD and Department of Veterans Affairs (VA) physicians concerning addiction and ways to help minimize risk. *The Prescription Drug Abuse Prevention Plan* calls for all controlled substance prescribers to complete a continuing education requirement. There are a number of free online programs developed by Federal agencies or in accord with the FDA risk mitigation blueprint that could meet this need.

Screening for and intervening with risky substance use before it reaches the level of a disorder is another strategy that holds potential. However, because patients may not always confide about use to providers, strategies to supplement screening are needed. Such strategies include requiring PDMP checks prior to prescribing controlled substances or locking high pharmacy utilizers into a single pharmacy or single prescriber program may reduce doctor shopping and misuse even in patients who might not readily admit to such behavior. Working with insurers and third party reimbursers to provide incentives for checking or to require PDMP checks is another promising avenue as many Veterans are seen by community providers and not the VHA.

Ensuring patients are only prescribed opioids for conditions that benefit from opioids and keeping doses in the lower ranges or requiring specialist care for higher doses are also strategies that have shown promise in certain states.¹⁹ The DoD has developed an excellent video-based training program that can be taken online for continuing medical education credits called “Do No Harm” which explicitly addresses patient expectations and pressure on those who treat pain in soldiers and Veterans.

On May 21, 2013, Army OTSG/MEDCOM issued a memorandum entitled, “Guidance for Managing Polypharmacy and Preventing Medication Overdose in Soldiers Prescribed Psychotropic Medications and Central Nervous System Depressants”. The “Do No Harm” training is incorporated in the roll up of the required annual training.

On June 7, 2013, a policy memo was issued by Brigadier General Sean Murphy, Commander, Air Force Medical Operations Agency (AFMOA) requiring the Do No Harm” training for providers. The Navy BUMED M-7 will also develop guidance to ensure that providers complete the training.

Shorter Sentences on Drug Users

The Attorney General has recently recommended shorter prison sentences for offenders convicted of non-violent drug crimes. However, some district attorneys and Assistant U.S. Attorneys believe that longer drug sentences have reduced crime across the country and made our communities safer.

Question: What are your thoughts on drug sentencing?

Answer: When the people sentenced are convicted of violent crimes or play a role in criminal organizations, longer sentences certainly may play a role in advancing public safety—a concern which is paramount in all communities. However, the Administration has long held the position that criminal justice consequences alone do not solve the drug problem in this country, and that sentences should be proportional to the conduct involved in the offense. Each year, the Administration’s *National Drug Control Strategy* calls for criminal justice reforms that are in line with what we know about substance use disorders—that they are a chronic disease of the brain that can be prevented and treated, and from which people can recover. This is true both in the public health and public safety arenas. As Attorney General Holder noted in his address to the American Bar Association in 2013, low-level, non-violent drug offenders and the public good are better served by diverting these individuals from the traditional justice process, offering them treatment for substance use disorders and mental illnesses, and connecting them with supportive, rehabilitative services.

¹⁹ Franklin GM, Fulton-Kehoe D, Turner JA, Sullivan MD, Wickizer TM. Changes in opioid prescribing for chronic pain in Washington State. *J Am Board Fam Med.* 2013 Jul-Aug;26(4):394-400. doi: 10.3122/jabfm.2013.04.120274. PMID: 23833154

Alternatives to incarceration, such as drug courts and smart probation initiatives, have shown significantly better outcomes in terms of sobriety and justice involvement than traditional punitive measures.²⁰

Incarceration is also costly and does not universally prevent future criminal behavior. Recidivism data recently released by the Bureau of Justice Statistics indicate that more than 75 percent of drug offenders were re-arrested for drug possession within 5 years of their release from prison.²¹ Further, the costs of incarceration are significantly higher, on average, than the cost of alternatives. In FY 2012, the Bureau of Prisons estimated it cost roughly \$29,000 to house a Federal inmate for a year;²² the Multi-site Adult Drug Court Evaluation estimated 18 months of drug court participation to cost \$11,106.²³

Faced with the stresses of returning to the community—and the environments, habits, and associations that led them to commit crimes in the first place—many people commit additional criminal acts after release.²⁴ Given this evidence, ONDCP advocates for appropriate, evidence-based treatment and supportive services for people reentering their communities (such as housing, education, and employment), to offer alternatives to criminal behavior and a chance for people to contribute to their communities and rejoin their families.

Question: Do you believe longer sentences create a deterrent for potential drug users and make our communities safer?

Answer: No. Comparing recidivism data from conventional incarceration practices with alternatives to incarceration, such as drug courts and Project HOPE (Honest Opportunity for Parole with Enforcement) indicates that the swift, certain, and *brief* jail-based sanctions employed by these alternatives—programs with a proven history of reducing recidivism—may be more effective at reducing future crime than conventional sentences. The threat of criminal justice consequences like prison or jail sentences may deter drug use among people who do not have a substance use disorder, and incarcerating people for the commission of violent crimes related to drug use may help improve public safety. However, a person whose criminal behavior is linked to an underlying substance use disorder—a chronic, recurring disease of the brain—is likely not making rational decisions about the potential consequences of their drug use.

For some people with substance use disorders, incarceration may be the appropriate course of action to protect public safety. Evidence-based treatment should be available to people in jail or prison, and people who receive treatment while incarcerated should be connected with community-based treatment services before they are released. For many, though, incarceration

²⁰ See, for example, the Multisite Adult Drug Court Evaluation: <http://www.nij.gov/topics/courts/drug-courts/pages/madce.aspx> and the National Institute of Justice's evaluation of the Project HOPE program: <http://www.nij.gov/topics/corrections/community/drug-offenders/Pages/hawaii-hope.aspx>.

²¹ Durose, Matthew R., et al. "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010." U.S. Bureau of Justice Statistics, April 2014.

²² Bureau of Prisons, Annual Determination of Average Cost of Incarceration. 78 FR 49770. August 15, 2013.

²³ Rossman, Shelli B., et al. *The Multi-Site Adult Drug Court Evaluation: The Impact of Drug Courts*. Volume 4. November 2011.

²⁴ Chandler, RK, et al. "Treating Drug Abuse and Addiction in the Criminal Justice System: Improving Public Health and Safety." *JAMA*. Jan. 14, 2009, 301 (2): 183-190.

without access to treatment is simply the most costly and least effective way to address drug-related crime.

Drug Control Policy Oversight

Over 35 governmental entities that receive some funding for the drug control mission. As the Office of National Drug Control Policy, you are responsible for the national strategy and making sure that agencies are coordinating their anti-drug efforts.

Question: How do you coordinate with other agencies like the Department of Justice, HHS, and Homeland Security?

Answer: ONDCP coordinates with other departments and agencies through a wide range of mechanisms, to include ONDCP's annual funding guidance and budget certification process, Interagency Policy Committees, and Interagency Working Groups. In addition, a number of ONDCP's core functions involve extensive interagency consultation and coordination, to include the drafting and clearance of the *National Drug Control Strategy*, monitoring the *Strategy's* implementation through the ONDCP Delivery Unit process (see below), and assessing progress against the *Strategy's* goals through the Performance Reporting System (see below).

Question: Are agencies following your strategy or are they doing their own?

Answer: Yes, as determined through the budget guidance/certification process, Delivery Unit, Performance Reporting System (PRS), and other means of interagency coordination, departments and agencies are following the *National Drug Control Strategy*. Departments and agencies are free to develop their own organization-specific drug-related strategies, but they must be consistent with the goals and objectives of the *National Drug Control Strategy*. ONDCP's budget and policy coordination circulars describe in detail the requirements for coordination with the *National Drug Control Strategy*.

Question: How do you hold agencies accountable and how do make sure their programs are effective?

Answer: Following the publication of the Administration's inaugural *National Drug Control Strategy* in 2010, ONDCP established the Delivery Unit, currently housed within the ONDCP Office of Management and Administration, which monitors and coordinates efforts by the ONDCP staff and their interagency partners to implement the specific action items contained within the *Strategy*. As of April 2014, the Delivery Unit has assessed that of the 112 action items in the *National Drug Control Strategy*, 88 (or 78 percent) have either been completed or are on track for completion. Performance evaluation is a key tool for ONDCP in its oversight of the National Drug Control Program agencies – it enables ONDCP to assess the extent to which the *Strategy* achieves its goals and account for the contributions of drug control agencies. ONDCP tracks and reports performance measures and targets established for each goal and objective in the *Strategy*. ONDCP, in collaboration with its interagency partners, has developed a performance monitoring and assessment

mechanism – the PRS – that monitors key performance measures to assess interagency progress toward the goals and objectives of the *Strategy*. The first PRS assessment will be released with the 2014 *Strategy*. This assessment, and follow-on assessments, will be used to inform prospective policymaking, planning, future *Strategy* development and implementation, and budget formulation and resource allocation.

Question: How many of your staff work on development of the National Drug Control Strategy?

Answer: The development of the *National Drug Control Strategy* is a whole-of-agency effort that also involves significant collaboration and consultation with interagency partners. Development of the *Strategy* is led from the Office of the Director, working with ONDCP subject matter experts who serve as coordinators for the development of each chapter. Other subject matter experts from throughout ONDCP and the interagency community provide input throughout the process. *Strategy* implementation is monitored by the Office of Management and Administration, which houses the Delivery Unit, and the Office of Research and Data Analysis, which houses the Performance Branch that is responsible for the Performance Reporting System.

Questions for the Record Submitted by Ranking Member José Serrano

Overall Federal Drug Control Spending & Policy

Question: Including ONDCP, there are 7 agencies with a proposed budget of \$25.363 billion that work to combat illegal drug use in one way or another. Please explain what each one does and how you work with them to ensure that, rather than duplicating efforts, you enhance the other's effectiveness.

Answer: The *National Drug Control Strategy* serves as the Administration's blueprint for drug policy in the United States. The annual *Strategy* provides an opportunity to articulate the Administration's approach to this complex public health and public safety issue, setting goals and providing updates on the Administration's efforts to meet them.

The Administration's *Strategy* is an evidence-based plan for real drug policy reform, spanning the spectrum of prevention, early intervention, treatment, recovery support, criminal justice reform, effective law enforcement, and international cooperation. The development and implementation of the *Strategy* has helped to foster a common approach and a common voice among the thirteen Federal Departments, two Independent Agencies, and the Federal Judiciary with responsibilities related to drug policy. By setting goals, and with the backing of the Office of National Drug Control Policy's (ONDCP) statutory budget authorities, the *Strategy* influences agency priorities, activities, and resource allocations across the Federal Government.

In support of the *Strategy*, the President is requesting \$25.5 billion in FY 2015 to support a balanced approach that brings all sectors of society together in a national effort to improve public health and public safety. This includes \$10.9 billion to support drug education programs and expand access to drug treatment for people suffering from substance use disorders, \$9.2 billion for support to domestic law enforcement, \$3.9 billion for interdiction efforts, and \$1.5 billion for international programs.

Spearheaded by the Departments of Health and Human Services (HHS) and Education, Federal resources totaling \$1.3 billion support education and outreach programs to prevent the initiation of drug use while encouraging community outreach efforts focused on getting those who have begun to use illicit drugs to cease their use – a nearly 5 percent increase over the FY 2014 level. Major efforts include grants to help state and local educational agencies prevent youth drug use and violence, support early childhood development activities, and provide needed student mental health services. Resources also support community grants that provide a sustainable and predictable source of prevention funding that will focus on high-risk communities and youth as well as support community drug-free coalitions throughout the United States.

The FY 2015 Budget proposes \$9.6 billion in Federal funds for early intervention, treatment, and recovery services to reduce drug use and its consequences. This is an increase of nearly 9 percent over the FY 2014 level. The Departments of HHS, Veterans Affairs (VA), Housing and Urban Development (HUD), Defense (DoD), and Justice (DOJ) work to expand and improve specialty addiction care for addiction, train and engage primary health care professionals to intervene in emerging cases of drug use, and develop safe and efficient paradigms to manage drug-related offenders in community corrections.

The Budget also continues strong support for “smart on crime” efforts that protect communities from drug-related crime and violence. The Budget includes \$9.2 billion in FY 2015 Federal resources to support domestic law enforcement efforts, a decrease of 1 percent from the FY 2014 level. This includes support for enforcement programs within Homeland Security (DHS), Justice, and Treasury, along with ONDCP’s High Intensity Drug Trafficking Areas program, and assistance for DoD’s National Guard program. Each of these programs is vital to help identify and dismantle transnational criminal organizations.

This Budget continues support to disrupt the flow of drugs entering the United States. The Federal Budget for interdiction totals \$3.9 billion. This includes support for DHS and DoD programs providing support for programs to interrupt the trafficking of illicit drugs into the United States by targeting the transportation links, bringing traffickers and other criminals to trial, and addressing money laundering and associated corruption.

Finally, support for international partnerships is another key area supported by this Budget. The FY 2014 Budget requests nearly \$1.5 billion to provide international support. Reducing drug use and its consequences is shared responsibility between the United States and partner nations. No one is immune to the threat of this challenge, and efforts by DOJ, DHS, DoD, and the Department of State provide the appropriate support to international partners working to increase citizen security, protect the rule of law, and strengthen public health and safety.

To enhance the effectiveness of the interagency, ONDCP takes full advantage of its various means of influence, including its funding guidance and budget certification process, coordinating at the interagency level, and promoting important initiatives among its stakeholders. This coordination includes, but is certainly not limited to, leading and facilitating Interagency Working Groups and the working groups of the Performance Reporting System, innumerable meetings between ONDCP staff and their counterparts in the Departments, Independent Agencies, the Office of Management and Budget, the Domestic Policy Council, and the National Security Council. In addition, ONDCP participates in broader-focused groups like the Prevention Council and the Interagency Partnership on Disconnected Youth and cosponsors research with the Departments on critical drug prevention and treatment issues.

ONDCP is constantly working to ensure that Federal drug control efforts are properly coordinated. As an example, the Government Accountability Office (GAO) released a report on April 25, 2013, entitled *Office of National Drug Control Policy: Office Could Better Identify Opportunities to Increase Program Coordination* (GAO-13-333). GAO found 76 drug abuse prevention and treatment programs are fragmented across 15 Federal agencies and provide some overlapping services, which could increase the risk of duplication. As a follow up to this report, ONDCP undertook an assessment of the extent of overlap, duplication, and coordination. At the onset of the review, ONDCP found additional prevention and treatment programs, bringing the list to 130 programs. ONDCP found nearly all of the programs serve distinct beneficiaries in distinct settings, which as a result prevents overlap and duplication. In a few cases where overlap could occur, a review of the grantees found duplication did not occur over a three year period ending in 2013. Further, ONDCP found that the agencies managing these programs have

coordinated their programs to achieve the best results. In a few cases, ONDCP found a limited number of programs that would benefit from greater coordination; ONDCP is working to ensure such coordination.

Question: How will Attorney General Holder’s proposal to reduce drug sentencing affect the National Drug Control Policy?

Answer: As the Attorney General noted in his 2013 address to the American Bar Association, ONDCP has championed reform in the way our justice system handles individuals with substance use disorders. In fact, the Administration has called for a reform to drug sentencing practices since its inaugural *National Drug Control Strategy*, released in 2010. Diverting low-level, non-violent offenders—that is, people who are not large-scale traffickers or engaged in criminal organizations—away from our Nation’s jails and prisons and toward treatment, supervision, and supportive services is a more rational way of approaching drug policy reform in the criminal justice system. The Administration’s approach to drug policy reform combines public safety and public health concerns to address substance use and its consequences, relying less on overly punitive measures while addressing the negative health effects of substance use.

Prescription Drug Abuse

Question: How effective has interstate data sharing among PDMPs been? Are the Department of Justice, the National Association of Boards of Pharmacy, and the states working well with each other and you to ensure that it is a success?

Answer: In 2006, only 20 states had prescription drug monitoring programs (PDMPs). Today, 49 states and the District of Columbia have laws authorizing PDMPs, and 48 states have operational programs.

Building upon this progress, the Administration is working with state governments and private sector technology experts to make PDMPs more user-friendly so prescribers can access them quickly and easily. As of May 2014, 25 operational PDMPs can share data with other states’ systems, and many PDMP administrators are working to better integrate these systems into other health information technology (IT) programs. To further these efforts, the HHS Office of the National Coordinator for Health Information Technology and the Substance Abuse and Mental Health Services Administration (SAMHSA) funded 13 pilot studies, completed in 2012²⁵ and 2013, that improved access to PDMPs by integrating directly into provider workflow through health IT systems. For example, the Indiana Network for Patient Care leveraged its secure hospital network to offer information from the state PDMP along with a “narcotic score” alert (using a formula to determine high risk based on the number of prescriptions) to emergency department doctors as part of their normal view of a patient’s record. In Kansas, a secure

²⁵ U.S. Department of Health and Human Services. Connecting Prescribers and Dispensers to PDMPs through Health IT. Linked to 5-26-2014 Available at http://www.healthit.gov/sites/default/files/pdmp_pilot_studies_summary.pdf

e-mail protocol sent a PDMP report to a patient's electronic health record when a certain threshold was met, such as when the patient sought to fill five prescriptions from five providers during one calendar quarter. These examples, along with the other pilots, are driving innovation and enabling seamless PDMP access that will better enable health care providers to protect the safety of their patients.

To further encourage the development of innovative health IT integration with PDMPs, SAMHSA awarded nine two-year grants in FY 2012. The Centers for Disease Control and Prevention (CDC) is conducting an evaluation of this initiative. In FY 2013 SAMHSA awarded seven additional two-year grants. Ongoing support from the Bureau of Justice Assistance (BJA), through the Harold Rogers PDMP Program, is facilitating efforts to enhance interoperability among state systems.

Prescription monitoring systems must continue to mature, and the Administration continues to focus on expanding interstate data sharing, streamlining PDMP operations, ensuring that controlled prescription drug data from Federal facilities are shared with state PDMPs, and working with state leaders to effectively fund these programs over the long term. In March 2014, VA issued a Final Rule authorizing VA physicians to access state PDMPs in accordance with state laws and to develop mechanisms to begin sharing VA prescribing data with state PDMPs.

Indian Health Service (IHS) clinics are now sharing data with state PDMPs in many states, and IHS is in the process of negotiating data-sharing with more states. With funding from CDC, BJA, and the Food and Drug Administration, the PDMP Center of Excellence at Brandeis University has developed the Prescription Behavior Surveillance System, which collects de-identified PDMP data from participating states. The data is being used in a novel way to track trends in the prescribing of controlled substances and indicators of their misuse. This information is used to evaluate the impact of various interventions related to prescribing at the state level.

A few states have mandated use of PDMPs by prescribers, including New York, Kentucky and Tennessee. We are beginning to see promising results in some of these states where evaluation data has been collected. For example, data suggest that PDMPs may decrease doctor shopping. In Tennessee, where prescribers were mandated to begin using the PDMP as of January 2013 and check it for each new controlled substance prescription, there was a 49 percent decrease in doctor shopping from its peak in the Third Quarter of 2011 to the end of the Fourth Quarter 4 of 2013.²⁶

Question: How successful have National Take Back Days been?

Answer: Over 2,100 tons of unwanted or expired medicines have been returned during the previous 8 Take Back Days. Although these efforts have been successful, we eagerly await the Drug Enforcement Administration's release of its final disposal rule, as it will

²⁶ Tennessee Department of Health Controlled Substance Monitoring Database Committee. Controlled Substance Monitoring Database 2014 Report to the 108th Tennessee General Assembly, February 1, 2014. Page 5. http://health.tn.gov/statistics/Legislative_Reports_PDF/CSMD_AnnualReport_2014.pdf

provide more options to make disposal more convenient and create more frequent opportunities for disposal. This should improve the likelihood of disposal. Community coalitions supported by the Drug-Free Communities (DFC) Support Program are strong supporters of National Prescription Take-Back Days. DFC-funded community coalitions participate in these events and many have taken this idea and developed permanent prescription drug drop-off locations in their communities.

Questions for the Record Submitted by Congressman Mike Quigley

Opioid Use

We have heard that the Administration is encouraging first responders to carry the overdose-reversal drug naloxone. As a safe, effective, life-saving treatment for an opioid overdose, we believe naloxone should be in the hands of those most likely to witness an opioid overdose, such as emergency responders and friends and family of at-risk opioid users. However, naloxone's status as a prescription drug makes wide distribution to potential bystanders difficult.

Question: Do you have suggestions on how to immediately increase access to naloxone?

Answer:

The Office of National Drug Control Policy (ONDCP) has actively been working with partners to increase access to the life-saving drug naloxone. Specifically, at the State, local, or Federal level:

1. Prescribers and programs working with people on chronic opioid therapy or people with a past history of opioid use disorders (e.g., people leaving incarceration, in addiction treatment, on chronic pain regimens) could prescribe naloxone directly to patients at risk of overdose with the expectation that family members or loved ones might use it on those patients in event of an overdose. The newly-approved naloxone autoinjector that comes with a trainer makes this an especially viable option;
2. Work with Federal prescribers to explore prescribing naloxone with any opioid prescription or to people at risk because of their medical history or pharmaceutical profile;
3. Continuing efforts to encourage law enforcement and emergency medical technicians could be required to carry naloxone;
4. Federal pharmacies could be required to stock naloxone;
5. Continue to provide support to law enforcement agencies for training on overdose prevention and naloxone administration as well as to acquire the medication itself; and
6. Encourage states to consider the adoption of naloxone access and overdose Good Samaritan laws.

Question: Given the rise in opioid-related fatalities, is Congress sufficiently funding drug abuse prevention and treatment programs?

Answer: In addition to those who misuse pharmaceuticals, or use illicit drugs such as heroin, several other populations are vulnerable to overdose. These include people who are using opioids as prescribed but who receive high doses of opioids or opioids in combination with other medicines for other conditions (e.g., sedatives for anxiety disorders), people who relapse to opioid use after periods of abstinence and people who use opioids as prescribed but combine them with alcohol. Much of the population that overdoses would not be reached by traditional prevention interventions or substance use disorder treatment even with additional funding.

Rather these individuals would likely be better served by other measures such as opioid overdose education and naloxone distribution. On April 2, the Substance Abuse and Mental Health Services Administration (SAMHSA) sent a letter to state agencies that administer the Substance Abuse Prevention and Treatment Block Grant (SAPTBG) to clarify that, at a State's discretion, SAPTBG funds (other than primary prevention set-aside funds) may be utilized to purchase naloxone and the necessary materials to assemble overdose kits and to cover the costs associated with the dissemination of such kits.

Additionally, expansion of treatment insurance resources are being carried out through the Affordable Care Act (ACA), which requires coverage of mental health and substance use disorder services as one of ten Essential Health Benefits included in health plans offered in the individual and small group markets. Plans offering essential health benefits must also comply with mental health parity rules. We estimate that with the ACA, 62.5 million people will receive expanded substance abuse benefits by 2020, with 32.1 million gaining those benefits for the first time.²⁷

The Drug-Free Communities (DFC) Support Program is a Federal grant program that provides funding to community-based coalitions that organize to prevent youth substance use. Since the passage of the DFC Act in 1997, the DFC program has funded more than 2,000 coalitions and currently mobilizes nearly 9,000 community volunteers across the country. In FY 2013 a total of 643 DFC grants were awarded (620 DFC grants and 23 DFC Mentoring grants), including continuation awards. Funding awards for FY 2014 will be made in September 2014.

Question: Are there any specific programs that you feel would benefit from additional funding to address this growing epidemic, both in terms of immediate deployment of proven programs and longer-term research into the neurological basis of addiction?

Answer:

A number of existing programs are essential to addressing this issue. For example:

- The Department of Justice's Harold Rogers Prescription Drug Monitoring Grant Program provides grants to state prescription drug monitoring programs. This program should be maintained, as it provides a key part in addressing the prescription drug abuse problem.
- SAMHSA's SAPTBG is critically important, because it funds services for those who are uninsured and unable to afford treatment, because it can cover services that cannot be reimbursed through other coverage, and because it helps ensure that the Nation's substance use disorder treatment and recovery support services infrastructure is sustained, lessening the impact of cutbacks at the state and local levels.
- Community-based recovery support services, such as those provided through recovery community organizations, are essential to help those overcoming opioid use disorders sustain their recovery. These services are supported through discretionary grants, such as those provided under the Recovery Community Services Program, and through the

²⁷ Berino, K., Rosa, P., Skopec, L. & Glied, S. (2013). Affordable Care Act Will Expand Mental Health and Substance Use Disorder Benefits and Parity Protections for 62 Million Americans. *Research Brief*. Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. Washington, DC (Citation: Abstract of the Brief found at http://aspe.hhs.gov/health/reports/2013/mental/rb_mental.cfm)

SAPTBG. However, it should be noted that state licensing and funding regulations can sometimes preclude the use of SAPTBG for this purpose.

- SAMHSA and many of the Health Resources and Services Administration-funded health centers use Screening, Brief Intervention, and Referral to Treatment (SBIRT) to effectively detect and treat substance use disorders. Many health centers have the capacity to place a patient at a nearby treatment provider or provide treatment directly in the health center when that is feasible and preferable to linkage to a specialty provider. Many health centers use co-location models under which treatment provider staff are stationed at health centers engage individuals who potentially need treatment, assess them, and link them to the appropriate care.
- The Mental Health Parity and Addiction Equity Act reduces barriers and improves access to treatment, including medication for opioid use disorders and residential treatment.
- The National Institutes of Health should continue to support research on abuse deterrent pain medications and the development of additional medicines for opioid use disorders and sedative use disorders.

Outreach to less accessible segments of the population

Portions of our population, including urban youth, have less access to traditional media than their peers nationwide, while simultaneously having greater risk of exposure to drugs and the violence and crime they breed.

Question: What is your office doing to serve these at-risk, under-privileged youths around the nation?

Answer: The Above the Influence (ATI) media campaign includes broad messaging to focus on substances most abused by teens, and delivers both broad prevention messaging at the national level and more targeted efforts at the local community level. ATI's transition from ONDCP to The Partnership for Drug-Free Kids was completed in May 2014. The Partnership has worked hand-in-hand with ONDCP since the inception of ATI and will be responsible for maintaining the brand moving forward.

Henceforth, ONDCP's Drug Free Communities grantees will continue to work on preventing drug use in vulnerable youth. Since the passage of the DFC Act in 1997, the DFC program has funded more than 2,000 coalitions and currently mobilizes nearly 9,000 community volunteers across the country. At the President's Budget Request level for FY 2015, ONDCP will be able to fund all continuation or in-cycle grants and DFC Mentoring Continuation grants. The DFC approach leverages local knowledge of local prevention needs. The DFCs 2011-2012 report showed 488 (70.2%) of DFC grantees provided posts on social media sites and Twitter and Facebook followers numbered 142,193 followers. The DFCs' catchment areas can reach 4.4 million middle school and 6.3 million high school students (although social media may magnify the actual reach if students from outside the catchment areas follow one another and share posts).

Question: Has your office taken any creative steps to share your message with these communities, and if so, can you comment on the effectiveness of your office's actions?

Answer: ONDCP continues to work with Federal partners and non-governmental organizations to improve research and knowledge surrounding substance abuse issues for at-risk populations, including rural, racial/ethnic minorities, and lesbian, gay, bisexual, and transgender (LGBT) youth. We are also working to reduce the stigma associated with substance use disorders and comorbid conditions such as hepatitis and other infectious diseases that is often a barrier to seeking care; address the provision of culturally competent care; and redress health disparities that exist in at-risk populations. ONDCP and other Administration officials also participate in outreach activities throughout the year but especially during Substance Abuse Prevention Month aimed to enhance awareness among at-risk populations of drug use and its consequences.

WEDNESDAY, MARCH 26, 2014.

THE JUDICIARY BUDGET

WITNESSES

HON. JOHN BATES, DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

HON. JULIA S. GIBBONS, CHAIR, COMMITTEE ON THE BUDGET OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

CHAIRMAN CRENSHAW'S OPENING REMARKS

Mr. CRENSHAW. Okay. This meeting will come to order. It is 2 o'clock. They are ringing the bells. Why don't we start, and we will go as far as we can. There are only two votes, so we will excuse ourselves and come right back, but let's just get started.

We want to welcome you all. I think that this, Judge Gibbons, is the tenth time that you have been before our subcommittee, and we appreciate your service and your willingness to meet with us. Judge Bates, I believe this is your first appearance before the subcommittee, but we look forward to working with you. Both of you also, thanks for being here today.

The work of the judiciary is critical to the preservation of our Nation's system of government, where each of the three branches have different responsibilities and checks on the other branches. Americans depend on an open, accessible and well funded Federal court system to resolve criminal, civil and bankruptcy disputes. The courts must have the trust and respect of our citizens to do the function that the Founding Fathers intended. So, in addition to the judiciary's probation and pretrial service, officers perform critical public safety missions by supervising more than 200,000 offenders and defendants who live and work in our communities.

And as you know, the Federal Government continues to operate in an environment of scarce resources, however, we will try to ensure that you have the resources that you need to accomplish your important mission. Over the past few years, you and your staff have worked closely with us to ensure that the judiciary receives increases to address only your most critical needs, and I thank you for your efforts to try to reduce costs during these challenging times.

The judiciary's budget request proposes a discretionary spending increase of about \$220 million. That is about 3.4 percent above the fiscal year 2014. And I am very appreciative of the fact that your request is a modest increase, but remember, funding remains scarce. So I want to work with you, I want to work with Ranking Member, Serrano, to identify any savings that we can find in the judiciary's cost, but we still want to provide the courts with the resources that you need to fulfill your constitutional responsibilities.

So I appreciate the important work that you do, and look forward to your testimony.

And now I would like to recognize my friend, Ranking Member Serrano.

RANKING MEMBER SERRANO'S OPENING REMARKS

Mr. SERRANO. Thank you, Mr. Chairman.

I would also like to welcome Judge Gibbons back for her 10th time. If there was a baseball contract, I think you would have a pension by now. That is the best pension in the world, I hear.

Back to the subcommittee, and Judge Bates, you are the rookie, but you will quickly find out that this is a very friendly Committee, especially last year, to this particular branch.

There have been some significant challenges for the Federal judiciary over the past year. Sequestration had an extremely negative impact on the ability of the Federal judiciary to function and for the various parts of the third branch to conduct its important constitutional duties. And although the Federal judiciary was able to operate during last fall's government shutdown, there were delays in trials and other pressing matters.

Thankfully, there has been some good news of late. In part because of your testimony here last year, I think many Members of Congress were persuaded of the vital need for additional funding for the judiciary, and the final fiscal year 2014 bill substantially reflected that need. We were able to increase funding for the Federal judiciary by \$316 million above the sequester level, which helped restore most, but not all, of the funding cuts that affected the judiciary through sequestration. I hope we will get a chance to discuss the impact of sequestration on the Federal court system and whether this additional funding has been able to restore services.

Your fiscal year 2015 budget request indicates that there is more work to be done in order to restore the ability of the judiciary to conduct fair and speedy trials, to help recently incarcerated individuals transition back into society, and to provide numerous pre-trial services, among other things.

One area that is of particular concern to me is our Federal defenders. Cuts both prior to and during sequestration resulted in both layoffs and significant furloughs during sequestration. Our Federal defenders play a vital role in upholding the Sixth Amendment's right to counsel, and I hope we get a chance to discuss how their work has been impacted by the sequester.

As I said last year, the role of the Federal judiciary extends beyond the courtroom and into all of our communities. This means that your funding is not just relevant for litigants, but for this Nation as a whole. We all, perhaps, take for granted in this country that every person can have a fair and speedy trial, but it is up to Congress to ensure that you have the funding to make these constitutional promises a reality.

Once again, welcome, and I look forward to your testimony.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

I think we will have time to hear an opening statement from Judge Gibbons. And Judge Gibbons, let me say that your written

statement will be made part of the record, so take in the neighborhood of 5 minutes to summarize that. The floor is yours.

JUDGE GIBBON'S OPENING REMARKS

Judge GIBBONS. Chairman Crenshaw, Representative Serrano, Judge Bates and I appreciate the opportunity you have given us. I am going to move as fast as somebody with a drawl can.

When I appeared before this committee last year, sequestration cuts were just going into effect, and I predicted dire consequences for the judiciary. Our fears were realized. Sequestration resulted in delays in case processing, reduced services at courthouses nationwide, caused large staffing losses in clerks of court offices and probation and pretrial services offices. We reduced funding for court security equipment, and court security officers worked fewer hours, thus creating security vulnerabilities.

Perhaps the most significant impact was in our Defender Services Program, which provides court-appointed counsel for indigent defendants. Federal defender organizations lost 400 staff during 2013, an 11 percent loss, and widespread furloughs were implemented.

In addition, a \$15 per hour temporary rate cut to panel attorney hourly rates was implemented on September 1, 2013, on an emergency basis, an unprecedented action.

This subcommittee, and the overall Appropriations Committee, responded with help through the funding you provided us in fiscal year 2014 in the omnibus appropriations bill. We are very appreciative of the 5.1 percent increase in discretionary appropriations, which essentially restored us to a pre-sequestration funding level. This funding stabilizes our financial position and allows us to reverse most of the emergency measures put in place due to sequestration. We will be able to backfill some of the more than 3,200 staff lost in recent years in clerks offices and probation and pretrial services offices, and we have sufficient funding to meet operational expenses.

We are particularly appreciative of the funding you provided for the Defender Services Program. We have been able to restore, effective March 1, the \$15 cut to panel attorney hourly rates and to begin backfilling the 400 staff lost in defender organizations. We anticipate this will take at least 2 years to accomplish, but we are committed to restoring the program to its former strength, and with your help, we can do that.

We continue our decade-long effort to reduce growth in the judiciary's budget in order to position ourselves for future fiscal realities. We have some real cost containment successes, but we realize there is more work to do.

My written testimony discusses in detail our efforts to reduce the judiciary's space footprint. We take your concerns about that seriously. We are pursuing a multifaceted approach to space reduction, including reducing the judiciary's space 3 percent by the end of fiscal year 2018. We will work hard to meet this goal.

There are several chief district judges in town for their annual meeting who have joined us today. They are on the front lines in the courts implementing cost-saving practices, some of which are national programs and some of which are locally grown. I want to

recognize each of them briefly. Judge Gloria Navarro of Nevada. Her court has developed the e-voucher system that is being enhanced to implement it as a national system. This system will automate the current paper voucher process for paying CJA panel attorneys.

Judge Ricardo Hinojosa of the Southern District of Texas. His court is a national leader in judicial administration and, over 25 years ago, was the first in the country to consolidate bankruptcy and district clerks offices.

We have with us Judge Kathryn Vratil of the District of Kansas and Judge Raner Collins of Arizona, both leaders in the area of shared administrative services, which will enable us to streamline operations by having courts within a judicial district share HR, IT and other resources. Thirty percent of courts nationally have adopted such arrangements.

Judge Jerry Simandle of New Jersey has been at the forefront of efforts to reduce space. His district has reduced space needs of probation offices, in one case moving probation from leased space into a courthouse and, in another, releasing excess probation space to GSA.

We also have some bankruptcy judges who are here in town for their conference. Judge Bill Glenn of the Middle District of Florida, whom I know you know well, Chairman Crenshaw, and Judge Ron Pearson of the Southern District of West Virginia. The bankruptcy courts were pioneers in many of the automation efforts that are now used by all courts.

For fiscal year 2015, we seek \$6.7 billion in discretionary appropriations, a 3.4 percent increase. This is the minimum amount required to meet our constitutional and statutory responsibilities. This is a current services budget that would simply maintain 2014 operations and allow continued recovery post-sequestration.

There are \$216 million for adjustments to base for standard pay and nonpay changes, and a total of \$3 million for two small program increases. We are not requesting any new staff beyond that funded for 2014.

In closing, both of you have been tremendous supporters of the judiciary, and I hope we will earn that support in the future. As you make decisions for the agencies under your committee's jurisdiction, we ask that you take into account our unique constitutional role in our system of government. In return, we commit to you that we will continue to be good fiscal stewards, cutting costs where possible, spending the dollars wisely, and making smart investments to achieve long-term savings.

I ask that my statement be placed in the record, along with those of the other court entities whom we represent. Thank you.

Mr. CRENSHAW. Thank you, Judge Gibbons.

[The information follows:]

**STATEMENT OF
HONORABLE JULIA S. GIBBONS, CHAIR
COMMITTEE ON THE BUDGET OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
OF THE
COMMITTEE ON APPROPRIATIONS OF THE
UNITED STATES HOUSE OF REPRESENTATIVES**

March 26, 2014

INTRODUCTION

Chairman Crenshaw, Representative Serrano, and members of the Committee, I am Judge Julia Gibbons of the Sixth Circuit Court of Appeals. Our court sits in Cincinnati, Ohio, and my resident chambers are in Memphis, Tennessee. As the Chair of the Judicial Conference Committee on the Budget, I will testify on the Judiciary's appropriations requirements for fiscal year 2015. In addition, I will look back at the sequestration cuts of fiscal year 2013 and summarize the impacts of those cuts on the federal courts, discuss fiscal year 2014 appropriations for the Judiciary, provide an update on our cost-containment program, including a detailed discussion of efforts underway to reduce the Judiciary's space footprint, and highlight our concerns regarding a new space rent appraisal process being considered by the Administration. This is my tenth appearance before an appropriations subcommittee on behalf of the federal Judiciary and my eighth appearance before the Financial Services and General Government panel. Appearing with me today is Judge John D. Bates, the new Director of the Administrative Office of the United States Courts.

STATEMENTS FOR THE RECORD

In addition to my statement and Judge Bates', I ask that the entire statements of the Federal Judicial Center, the U.S. Sentencing Commission, the U.S. Court of Appeals for the Federal Circuit, and the U.S. Court of International Trade be included in the hearing record.

ROLE OF THE JUDICIAL BRANCH

Chairman Crenshaw and Representative Serrano, each year in my appearance before this Committee I ask that as you consider funding levels for the upcoming fiscal year that you take into account the nature and importance of the work of the federal courts, and I do so again this year because it is a point that bears repeating. The Judiciary performs Constitutionally-mandated core government functions that are a pillar of our democratic system of government. The scope and volume of our work is attributable to carrying out functions assigned to us by the Constitution and by statute. We must adjudicate all cases that are filed with the courts, we must protect the community by supervising defendants awaiting trial and offenders on post-conviction release, we must provide qualified defense counsel for defendants who cannot afford representation, we must pay jurors for costs associated with performing their civic duty, and we

must ensure the safety and security of judges, court staff, litigants, and the public in federal court facilities. This is a broad mission and one that all of us in the Judiciary take very seriously.

As I will describe in my testimony, sequestration had a devastating impact on federal court operations in fiscal year 2013, and the funding Congress provided in fiscal year 2014 will stabilize our financial position. I am very concerned, however, about the longer-term funding prospects for the Judiciary in what will be a constrained federal budget environment for the foreseeable future. As you know, the Bipartisan Budget Act of 2013 – the budget agreement that modifies the Budget Control Act to set government-wide discretionary spending caps for fiscal year 2014 and fiscal year 2015 – provides essentially no growth from fiscal year 2014 to 2015, increasing only \$2 billion with the increase split equally between defense and non-defense spending. Beyond fiscal year 2015, in the absence of additional deficit reduction, the spending caps will rise by an inflationary rate of about 2.4 percent annually through fiscal year 2021. Flat funding in fiscal year 2015 and nominal increases in the out-years will present a new round of difficult funding decisions for Congress. We ask the Committee to take into account the nature and importance of our work and to make the Judicial Branch a funding priority again in fiscal year 2015 as well as in future years.

IMPACT OF SEQUESTRATION

Chairman Crenshaw and Representative Serrano, a year ago I appeared before this Committee as sequestration cuts government-wide were going into effect. At that time, I conveyed to the Committee in strong terms the dire circumstances the federal Judiciary would find itself in under sequestration. A year later, I can report that our fears were in fact realized. Sequestration cuts resulted in delays in case processing and reduced public services at courthouses nationwide. We experienced large staffing losses in clerks of court, probation and pretrial services offices, and federal defender organizations, and widespread furloughs were implemented. The cuts in probation and pretrial services offices could have adversely impacted public safety. We reduced funding for court security systems and equipment, and court security officers were required to work fewer hours, thus creating security vulnerabilities throughout the federal court system.

Perhaps the most significant impact was in our Defender Services program, which provides court-appointed counsel for defendants accused of a federal crime who cannot afford legal representation. Federal defender organizations (FDOs) downsized by 400 staff (11 percent) during fiscal year 2013 and implemented 165,000 furlough hours, and two weeks of voucher payments to private panel attorneys had to be deferred into fiscal year 2014. In addition, a \$15 per hour temporary rate cut to panel attorney hourly rates was implemented on an emergency basis on September 1, 2013.

In the District of Arizona, staffing losses caused the federal defender to withdraw from Operation Streamline immigration cases – which generate approximately 70 immigration defendants per day – and from representing indigent defendants in veterans' courts. The federal defender office in New York City asked the federal district court to postpone the trial of Sulaiman Abu Ghaith (Osama bin Laden's son-in-law) because of staff cutbacks. Federal courts in the District of Columbia, the District of New Mexico, the Western District of Texas, and the

Western District of New York stopped scheduling criminal matters on alternating Fridays because of FDO staffing shortages in those districts. These were all unprecedented actions and are representative of the impact of sequestration cuts on FDOs nationwide.

Although fiscal year 2013 is certainly not a year that will be remembered fondly by those of us in the Judiciary, the tough times were met with hard work and resourcefulness by the 33,000 judges, probation and pretrial services officers, clerks of court staff, federal defenders, law clerks, and other personnel who comprise the Judicial Branch. The nation is fortunate to have such a dedicated group of individuals working in the federal courts.

FISCAL YEAR 2014 FUNDING FOR THE JUDICIARY

Turning to fiscal year 2014 funding, I would like to thank the Committee for the funding the Judiciary received in the Consolidated Appropriations Act of 2014, the 12-bill omnibus spending measure that funds the federal government for fiscal year 2014. The omnibus bill provided the Judiciary with a 5.1 percent increase in discretionary appropriations above the fiscal year 2013 sequestration level, essentially restoring Judiciary appropriations to a pre-sequestration funding level. Sequestration resulted in deep cuts to court staffing levels and operating budgets, as I just discussed. The funding provided in the omnibus will allow us to reverse most of the emergency measures that were put in place because of sequestration. It will allow us to backfill some vacancies in clerks of court, probation and pretrial services offices, and federal defender organizations, and will provide sufficient funding to meet operational expenses for fiscal year 2014. I will describe how we intend to utilize fiscal year 2014 funding for the Judiciary's four major accounts.

The Salaries and Expenses account is funded at the Judicial Conference's appeal level. Fiscal year 2014 funding will provide for an overall 6 percent increase in decentralized court operating budgets above the fiscal year 2013 level for clerks of court and probation and pretrial services offices nationwide. Flat budgets for several years, followed by sequestration, reduced court staffing levels in clerks of court and probation and pretrial services offices by over 3,200 staff (15 percent) since July 2011, including 1,200 (6 percent) lost in fiscal year 2013 alone. In fact, current staffing levels in those offices are at 1997 levels. The fiscal year 2014 funding level will enable courts to backfill some, but not all, of those vacancies. In our probation and pretrial services program, funding for drug and mental health testing and treatment services for defendants awaiting trial and offenders released from prison, and related electronic and GPS location monitoring services for those individuals, are fully restored for fiscal year 2014. We were very concerned about the impact of these cuts on public safety and made restoring them a top priority.

The Defender Services program is funded at the Judicial Conference's appeal level for fiscal year 2014. All payments to private panel attorneys providing defense representation to eligible clients can be paid in fiscal year 2014. This includes two weeks of fiscal year 2013 payments that had to be deferred into fiscal year 2014 because of sequestration cuts. Federal defender organizations will be able to backfill a significant number of the 400 staff lost in fiscal year 2013 as a result of sequestration. We intend to utilize the no-year funding authority in this account to add back staff over a two-year period. The Judiciary was also able to fully restore,

effective March 1, 2014, the \$15 per hour temporary rate reduction to panel attorney hourly rates that was implemented on September 1, 2013, as well as provide a 1 percent cost-of-living adjustment to panel attorney rates consistent with the adjustment provided to all federal workers for 2014. Panel attorney rates as of March 1, 2014, are \$126 per hour for non-capital work and \$180 per hour for capital work.

The Court Security and Fees of Jurors accounts are also funded at the appeal level. Sequestration resulted in a 30 percent cut in funding for court security systems and equipment, and court security officers were required to work reduced hours. Those funds have been restored for fiscal year 2014. Fiscal year 2013 funding to pay petit and grand jurors was exhausted in August 2013 and the Judiciary had to request an expedited funding transfer to ensure that jurors could be paid for performing their civic duty and that criminal and civil jury trials could continue as scheduled. This funding is restored for fiscal year 2014.

COST CONTAINMENT

The Judiciary is 10 years into an intensive cost-containment effort. Over this period many cost-cutting initiatives have been implemented that have helped limit growth in the Judiciary's budget. We believe that cost containment has achieved all that could be done relatively easily, and we are now embarking on a new round of cost-containment initiatives. This new round will be more difficult as it will challenge long established Judiciary customs and practices. Some initiatives are likely to be controversial within the Judiciary, may be complex and involve many stakeholders, and could be difficult to implement quickly. However, we are committed to doing everything we can to conserve resources and be good stewards of the taxpayers' money. Our cost-containment efforts are essential to positioning the Judiciary for the fiscal realities of today and the future.

We continue to look for ways to streamline Judiciary operations. Specifically, we continue to expand the use of shared administrative services among the courts of appeals, district courts, bankruptcy courts, probation and pretrial services offices, and federal defender organizations. In fiscal year 2014, nearly 30 percent of all courts have formal sharing arrangements of some kind. The decision to migrate to a shared services model is up to each circuit/district although we have reduced staffing requirements slightly in anticipation of further sharing. We believe shared services will reduce duplication caused by multiple human resources, procurement, financial management, and information technology staffs in a single judicial district or circuit. Shared services should allow courts to partially absorb budget cuts by reducing administrative staffing and overhead costs, and streamlining administrative processes, enabling them to minimize cuts to staff performing core operations.

We will continue our efforts to reduce cost growth in the Judiciary's budget, but no amount of cost containment will offset budget cuts or even flat funding in fiscal year 2015. We look to Congress to provide the resources we need to do our work.

REDUCING THE JUDICIARY'S SPACE FOOTPRINT

Chairman Crenshaw, this Committee has expressed concern in recent years regarding the Judiciary's space footprint so I will next update the Committee on our efforts in this area.

One of the Judiciary's most significant cost-containment successes to date has been limiting the growth in space rent costs. As a result of cost-containment initiatives put in place in recent years, our fiscal year 2015 budget request for rent payments to the General Services Administration (GSA) reflects a cost avoidance of approximately \$400 million below estimates made prior to implementation of our cost-containment initiatives. We have revised our long-range space planning process to better prioritize space needs with an eye towards cost. With strong controls in place to limit the growth in space rent costs, we are now focusing on reducing the Judiciary's overall space footprint.

Space reduction and the resulting savings in rent paid to GSA remain the Judiciary's top cost-containment priority. The Judiciary continues to pursue a multi-faceted strategy to achieve footprint reductions. At its September 2013 session, the Judicial Conference approved three new initiatives:

- 3 Percent Space Reduction Target. The Judicial Conference set a 3 percent space reduction target by the end of fiscal year 2018. This target will be prorated nationwide based on the square footage occupied by each federal judicial circuit, subject to exclusions for new courthouse construction, renovation, or alterations projects approved by Congress. The baseline for this policy is space holdings within each circuit as of the beginning of fiscal year 2013.
- "No Net New" Policy. Under this policy, any increase in square footage within a circuit would need to be offset by an equivalent reduction in square footage within the same fiscal year. Similar exclusions to the 3 percent reduction target described above apply.
- Space and Rent Management Plans. Each circuit judicial council is required to formulate a space and rent management plan by May 2014, articulating how the new space reduction policy will be implemented.

The Judiciary's space reduction efforts will be accomplished partly through the Integrated Workplace Initiative (IWI), which seeks to create a smaller and more efficient workplace that reflects changing work practices, such as mobile work or telework for some court employees. For example, probation offices generally require less space now because of the nature of the work that most probation officers currently perform (i.e., they use mobile devices while working in the field). As a result, some probation offices could reduce the amount of commercial space that they lease, or they could move out of commercial space and into courthouses, while occupying less space in the courthouses than previously needed. This is just one example.

The Judiciary's ability to reduce space will require up front investments to reconfigure space and relocate staff. Accordingly, the Judiciary's fiscal year 2014 financial plan includes \$30 million for space reduction efforts and \$25 million is planned for fiscal year 2015. I will describe briefly five space reduction efforts currently underway in fiscal year 2014:

- Chicago, Illinois. The probation office is planning to relocate from commercial leased space (which will be released back to GSA) to a federal building and reduce its space needs by more than 50 percent through the adoption of mobile work styles, desk sharing, and an open space configuration, resulting in annual rent savings of at least \$1.4 million. Project costs are estimated to be \$3.4 million.
- Miami, Florida. The bankruptcy court is planning to relocate from space in a federal building (which will be released back to GSA) to a courthouse resulting in \$1.1 million in annual rent savings. Project costs are estimated to be \$230,000.
- Philadelphia, Pennsylvania. Three resident circuit chambers for the U.S. Court of Appeals for the Third Circuit are being reconfigured to accommodate 12 non-resident circuit judges (and staff) in lieu of expansion into the adjacent federal building or a new courthouse. This solution results in significant cost avoidance to the Judiciary. Project costs are estimated to be \$1.5 million.
- Fayetteville, Arkansas. The district and bankruptcy clerks of court offices are being reconfigured to co-locate those offices in order to provide space for a district judge's chambers. Project costs and estimated savings are not yet available.
- Albuquerque, New Mexico. The bankruptcy court is planning to relocate from a federal building into circuit court library space. Project costs and estimated savings are not yet available.

The Judiciary also continues to look at closing non-resident judicial facilities where practicable. Since 1996, the Judiciary, as a cost-containment effort, has identified court facilities without a full-time resident judge that could potentially be closed. Non-resident judicial facilities are considered for closure by the Judicial Conference based on specific criteria and upon the recommendation of the appropriate circuit judicial council. The most recent space reductions that were approved by the Conference at its September 2012 session will eventually result in the release of 56,000 square feet of space in six non-resident facilities with projected annual rent savings of approximately \$1.0 million. The Judicial Conference will consider new closures at its September 2014 session.

I will close on this topic by assuring the Committee that we take seriously your concerns regarding the Judiciary's space inventory, but I must also emphasize that GSA's cooperation is essential to our ability to reduce space. As the Judiciary's landlord, we will need GSA to work closely with us on space reduction, including taking back excess space from us in a timely manner.

NEW RENT APPRAISAL PROCESS WOULD ADD MILLIONS TO RENT BILL

I would like to mention briefly our concern regarding a new space rent appraisal methodology that the Administration is considering as the basis for determining agency rent charges. We have communicated our concerns to both GSA and the Office of Management and Budget (OMB), which is currently reviewing the policy.

The new methodology introduces a subjective element into the rental rate that could increase Judiciary space rental costs significantly. Previously, GSA appraisers used a straightforward mathematical calculation to compute the rental rate in order to meet market averages. The new methodology shifts a greater portion of a building's common area costs from GSA to the building's tenants. We find this new methodology unfair. The new pricing would force the Judiciary to pay more for common areas and wide hallways necessary to accommodate the public consistent with the First and Sixth Amendment guarantees to publicly accessible judicial proceedings. Further, the Judiciary is essentially a permanent tenant of courthouses and relocating to less expensive space is generally not an option. If the Judiciary is charged rent based on the new methodology, *preliminary estimates indicate our rent bill would go up by tens of millions of dollars annually.*

We understand that rent bills using the new methodology, if approved for implementation by OMB, would not take effect prior to fiscal year 2017; however, we want to bring our concerns to the attention of the Committee at this time. I just described for the Committee efforts underway to reduce the Judiciary's space footprint. If the new policy is implemented, we would find ourselves in the paradoxical position of reducing our space footprint at the same time our rent bill is increasing dramatically. We will continue our discussions with GSA and OMB officials on this issue and will keep the Committee apprised of the progress of those talks.

FISCAL YEAR 2015 BUDGET REQUEST

For fiscal year 2015, the Judiciary is seeking \$6.7 billion in discretionary appropriations, a 3.4 percent (\$219.5 million) overall increase above the fiscal year 2014 enacted appropriations level. We believe the requested funding level represents the minimum amount required to meet our Constitutional and statutory responsibilities.

The Judiciary's fiscal year 2015 request is a current services budget that simply seeks to maintain the fiscal year 2014 level of operations in the courts. The request includes \$216.2 million for adjustments to base for standard pay and non-pay changes, including a 1 percent cost-of-living adjustment for Judiciary personnel consistent with the President's recommendation for Executive Branch personnel, and a total of \$3.3 million for two small program increases in the Supreme Court Building and Grounds account. I will summarize the 2015 requests for our four major accounts.

The Judiciary's largest account, courts' Salaries and Expenses, funds the bulk of federal court operations nationwide including the regional courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices. For this account, we are requesting a 3.6 percent increase in fiscal year 2015 to \$4.8 billion in discretionary appropriations. I note that we

are not requesting any new staff in clerks of court or probation and pretrial services offices above the level funded in fiscal year 2014. In addition, we are requesting an increase of \$26.7 million for additional chambers staff associated with newly confirmed judges and judges taking senior status. Adjustments in our space program net to zero after combining upward adjustments with reductions in base rent costs and savings from our space footprint reduction initiative. After “re-basing” fiscal year 2014 funding for space reduction, we are requesting an additional \$10 million to provide \$25 million for space reduction projects to configure Judiciary space where possible to reduce space needs. The request also includes \$2.8 million to restore Second Chance Act funding for probation officers to assist offenders released from prison with emergency and transitional services and assistance. The Salaries and Expenses request includes no program increases.

The Defender Services program, which provides court-appointed criminal defense representation under the Criminal Justice Act to financially eligible defendants, requires a 0.8 percent increase to \$1.05 billion in fiscal year 2015 to handle an estimated 212,442 weighted representations. No additional staff are requested above the level funded in fiscal year 2014, but federal defender organizations will have the ability to continue backfilling vacancies. The fiscal year 2015 request provides for inflationary pay and benefits adjustments for federal defender organizations, general inflation, and payments to panel attorneys, including a 1 percent cost-of-living adjustment to hourly rates, raising the capital rate from \$180 to \$181, and the non-capital rate from \$126 to \$127. The small percentage increase requested for this account (0.8 percent) is attributable to (1) low caseload growth projected for fiscal year 2015 (about 1 percent), and (2) high staff vacancy rates in federal defender organizations (as a result of sequestration) and lower than anticipated panel attorney payments this fiscal year that are expected to generate higher than normal carryforward balances that will reduce fiscal year 2015 appropriations needs. The request includes no program increases.

Our Court Security account funds protective guard services and security systems and equipment at federal courthouses and requires a 6.7 percent increase to \$531 million for fiscal year 2015. The \$33 million increase is primarily comprised of two items. Approximately half (\$15 million) of the requested increase is associated with a projected decline in no-year carryforward balances available in fiscal year 2014 but not fiscal year 2015. A 3 percent collective bargaining wage rate adjustment for contract court security officers accounts for \$13 million of the increase. The remaining increase is for 10 additional court security officers, higher Federal Protective Service costs, and other standard adjustments. The request includes no program increases.

The Fees of Jurors and Commissioners account funds statutory fees and allowances for grand and petit jurors, and land commissioners. This includes the daily compensation paid to jurors as well as related costs for meals and incidental expenses. This account requires \$55.8 million in fiscal year 2015, a 3.6 percent increase above fiscal year 2014. The bulk of the increase – \$1.3 million of \$1.9 million – is associated with a projected decline in no-year carryforward balances available in fiscal year 2014 but not fiscal year 2015. The remaining increase is for standard inflation and an increase in projected petit juror requirements. The request includes no program increases.

A summary of fiscal year 2015 adjustments to base and program increases and appropriations requirements for each Judiciary account is included at Appendix A.

CONCLUSION

Chairman Crenshaw and Representative Serrano, I hope that my testimony today provides you with some insight into the funding needs of the federal courts. You both have been tremendous supporters of the Judiciary and I am hopeful that support will continue. As you make decisions on fiscal year 2015 funding for the agencies under the Committee's jurisdiction, we ask that you take into account the Judiciary's unique Constitutional role in our system of government. In return, we commit to you that we will continue to be good fiscal stewards, cutting costs where possible, spending each dollar wisely, and making smart investments to achieve long-term savings.

Thank you for your continued support of the federal Judiciary. I would be happy to answer any questions the Committee may have.

The Federal Judiciary's Fiscal Year 2015 Budget Request

- The Judiciary's fiscal year 2015 budget request of \$6.7 billion in discretionary appropriations reflects a 3.4 percent increase above fiscal year 2014 to support the Constitutional and statutory mission of the federal courts. This budget will help the Judiciary continue to recover from several years of essentially flat funding followed by sequestration cuts in fiscal year 2013. The request is a current services budget that primarily reflects adjustments to base for standard pay and non-pay inflationary increases.
- In fiscal year 2014, Congress provided the Judiciary with \$6.5 billion in discretionary appropriations – a 5.1 percent increase – stabilizing the Judiciary's financial position following a year in which sequestration reduced overall Judiciary funding by nearly \$350 million. Fiscal year 2014 funding approximates 2013 appropriations *prior* to sequestration and enables the Judiciary to restore most sequestration cuts, including the following:
 - cuts to mental health and drug testing and treatment services for offenders released from prison and defendants awaiting trial, and related GPS location monitoring of those individuals;
 - reductions in information technology and essential network infrastructure;
 - cuts to the court security and fees of jurors programs; and
 - the \$15 per hour panel attorney temporary rate cut (restored effective March 1, 2014).
- In addition, clerks of court, probation and pretrial services offices, and federal defender organizations have funding to begin backfilling some vacancies in fiscal year 2014, and \$30 million is available for the Judiciary's top cost containment initiative: reducing the Judiciary's space footprint by a targeted 3 percent by the end of fiscal year 2018.
- The Judiciary's fiscal year 2015 request is a current services budget that simply seeks to maintain the full year fiscal year 2014 level of operations in the courts. No new staff are requested but clerks of court, probation and pretrial offices, and federal defender organizations will have the ability to continue backfilling some vacancies. The request funds projected workload requirements in defender services, provides for a sufficient level of security at federal court facilities nationwide, and ensures funds are available for juror costs associated with criminal and civil jury trials.

Details of the Fiscal Year 2015 Budget Request

- The Judiciary's fiscal year 2015 appropriations request totals \$7.3 billion. The request includes \$6.7 billion in discretionary appropriations, an increase of \$219.5 million (3.4 percent) above the fiscal year 2014 enacted level. The request also includes \$565.6 million in mandatory appropriations, an increase of \$42.9 million above fiscal year 2014.

Discretionary Appropriations

- A total of \$216.2 million (98 percent) of the \$219.5 million increase requested will provide for pay adjustments, inflation, and other adjustments to base necessary to maintain current services. Of this amount:
 - An increase of \$97.1 million will provide for inflationary pay and benefit rate increases for magistrate and claims judges and support personnel, including annualization of fiscal year 2014 pay adjustments, expected January 2015 pay adjustments (e.g. 1.0% ECI adjustment for federal workers), changes in benefits costs, a cost-of-living adjustment for panel attorneys, and a wage rate adjustment for court security officers;
 - An increase of \$62.6 million is necessary to replace non-appropriated sources of funds used to support base requirements in fiscal year 2014 with direct appropriations;
 - An increase of \$26.7 million is associated with additional chambers staff for newly confirmed judges and judges taking senior status;
 - An increase of \$22.8 million will provide for increases in contract rates and other standard inflationary increases;
 - An increase of \$10.0 million is requested for the Integrated Workplace Initiative to pay upfront costs incurred by local courts to reconfigure existing space into a smaller space footprint;
 - An increase of \$5.0 million is for security-related adjustments;
 - An increase of \$2.9 million is to restore the sequestration cut for Second Chance Act funding for probation officers to assist offenders released from prison with emergency and transitional services and assistance; and
 - A net decrease of \$10.9 million is associated with fiscal year 2014 non-recurring requirements and other minor adjustments.
- The remaining \$3.3 million (2 percent) of the requested increase is for program enhancements for building exterior façade restoration and security systems maintenance at the Supreme Court.

Mandatory Appropriations

- A \$42.9 million increase is requested for Judiciary mandatory appropriations, as follows:
 - An increase of \$14.2 million is for pay adjustments for mandatory judges' salaries for the Supreme Court, Federal Circuit, International Trade, and courts' Salaries and Expenses, including annualization of fiscal year 2014 pay adjustments, expected January 2015 pay adjustments (e.g. 1.0% ECI adjustment for federal workers), and changes in benefits costs;

- An increase of \$12.0 million is for salary costs associated with 70 projected judge confirmations and 36 judges taking senior status in fiscal year 2015; and
- An increase of \$16.7 million is required for the Judiciary retirement trust funds accounts based on requirements calculated by an independent actuary.

Judiciary Appropriations (\$000)

Discretionary Appropriations:

Appropriation Account	FY 2014 Enacted	FY 2015 Request	\$ Change FY 2015 vs. FY 2014	% Change FY 2015 vs. FY 2014
U.S. Supreme Court				
Salaries & Expenses	\$72,625	\$74,967	\$2,342	3.2%
Care of Building and Grounds	\$11,158	\$11,640	\$482	4.3%
Total	\$83,783	\$86,607	\$2,824	3.4%
U.S. Court of Appeals for the Federal Circuit	\$29,600	\$30,212	\$612	2.1%
U.S. Court of International Trade	\$19,200	\$17,807	(\$1,393)	-7.3%
Courts of Appeals, District Courts, and Other Judicial Services				
Salaries & Expenses - Direct	\$4,658,830	\$4,827,588	\$168,758	
Vaccine Injury Trust Fund	\$5,327	\$5,423	\$96	
Total	\$4,664,157	\$4,833,011	\$168,854	3.6%
Defender Services	\$1,044,394	\$1,053,158	\$8,764	0.8%
Fees of Jurors & Commissioners	\$53,891	\$55,827	\$1,936	3.6%
Court Security	\$497,500	\$530,763	\$33,263	6.7%
Subtotal	\$6,259,942	\$6,472,759	\$212,817	3.4%
Administrative Office of the U.S. Courts	\$81,200	\$84,399	\$3,199	3.9%
Federal Judicial Center	\$26,200	\$26,959	\$759	2.9%
U.S. Sentencing Commission	\$16,200	\$16,894	\$694	4.3%
Direct	\$6,510,798	\$6,730,214	\$219,416	
Vaccine Injury Trust Fund	\$5,327	\$5,423	\$96	
Total Discretionary Appropriations	\$6,516,125	\$6,735,637	\$219,512	3.4%

Mandatory Appropriations:

Salaries of Judges ¹	\$395,820	\$422,006	\$26,186	
Judiciary Retirement Trust Funds	\$126,931	\$143,600	\$16,669	
Total Mandatory Appropriations	\$522,751	\$565,606	\$42,855	8.2%

Total Judiciary Appropriations	\$7,038,876	\$7,301,243	\$262,367	3.7%
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¹ Mandatory salaries include the salaries of justices of the Supreme Court, judges of the Court of Appeals for the Federal Circuit and Court of International Trade, and Article III and bankruptcy judges funded in the Courts' Salaries and Expenses account. (Magistrate judges and Court of Federal Claims judges are funded in the Courts' Salaries and Expenses account through discretionary appropriations.)


HONORABLE JULIA SMITH GIBBONS

United States Circuit Judge
970 Federal Building
Memphis, TN 38103

Judge Julia Smith Gibbons was appointed to the United States Court of Appeals for the Sixth Circuit in 2002. Prior to her appointment as circuit judge, she served as United States District Judge for the Western District of Tennessee from 1983 - 2002. She was Chief Judge of the district court from 1994-2000. Prior to becoming a federal district judge, Judge Gibbons served as judge of the Tennessee Circuit Court for the Fifteenth Judicial Circuit from 1981-83. Judge Gibbons chairs the Budget Committee of the Judicial Conference of the United States.

From 1979 to 1981 Judge Gibbons was Legal Advisor to Governor Alexander. She was in the private practice of law from 1976 to 1979 with the Memphis firm of Farris, Hancock, Gilman, Branan & Lanier. In 1975-76 she served as law clerk to the late Honorable William E. Miller, Circuit Judge, United States Court of Appeals for the Sixth Circuit. She was admitted to the Tennessee bar in 1975.

Judge Gibbons received her J.D. degree from the University of Virginia School of Law. At Virginia she was elected to Order of the Coif and was a member of the Editorial Board of the *Virginia Law Review*. She received her B.A. *magna cum laude* from Vanderbilt University in 1972 and was elected to Phi Beta Kappa.

**STATEMENT OF RANDALL R. RADER
CHIEF JUDGE, UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
BEFORE THE SUBCOMMITTEE
ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
OF THE COMMITTEE ON APPROPRIATIONS
OF THE UNITED STATES HOUSE OF REPRESENTATIVES**

March 26, 2014

Chairman Crenshaw, Representative Serrano, and members of the Committee, thank you for affording me the opportunity to submit this statement in support of the United States Court of Appeals for the Federal Circuit's fiscal year 2015 budget request. I am Randall R. Rader, and I have served as Chief Judge of this Court since June 1, 2010.

Located in Washington, D.C., the United States Court of Appeals for the Federal Circuit has exclusive nationwide jurisdiction over a large and diverse subject area. The Federal Circuit's jurisdiction includes appeals in all patent cases, all government contract cases, all international trade cases, all government personnel cases, all cases involving monetary claims against the United States under the Tucker Acts, veterans' cases, and many others.

Appeals to the Federal Circuit come from the 94 Federal District Courts, the United States Court of Federal Claims, the United States Court of International Trade, and the United States Court of Appeals for Veterans Claims. The Court also hears appeals from certain administrative agency decisions, including the United States Merit Systems Protection Board, the Boards of Contract Appeals, the Patent Trial and Appeal Board, and the Trademark Trial and Appeals Board. In addition, the Court reviews decisions of the United States International Trade Commission, the Office of Compliance, an independent agency in the legislative branch, and the Government Accountability Office Personnel Appeals Board.

I fully appreciate the challenging fiscal reality in which we all must continue to operate. I also appreciate the need to continue to reduce the federal deficit and contain spending. As a result, the Federal Circuit has worked diligently to tighten its fiscal belt and we continue to work to find

ways to control and contain operating expenses. In fiscal year 2013, we endured the sequestration and rescission of funds without resort to the staff furloughs that affected many other courts because we imposed a hiring freeze and leveraged funding from staff and chambers vacancies. Nevertheless, knowing that all of the Court's chambers would filled by the end of fiscal year 2013, we also prepared for the eventuality of an even more austere fiscal year 2014 by abolishing our Mediation Office – closing a satellite office space for the Chief Mediator in the Kluczynski Federal Building in Chicago and releasing three permanent employees. The Court also took steps to hold down costs, at least temporarily, through reorganization and staff attrition, trying like many other organizations inside and outside the Judiciary to do more work with fewer people. Current lowered staffing levels are probably not permanently sustainable, but I am confident we will realize some long-term reduction.

I extend my sincere appreciation to the Committee for recognizing the Federal Circuit's needs in the enacted appropriation for the Court in fiscal year 2014. The funds you appropriated will ensure that the Court is able to fulfill its mission of timely adjudication of cases during fiscal year 2014. Please be assured that under my leadership, the Federal Circuit will continue to be a vigilant steward, managing its financial resources scrupulously through sound fiscal, procurement and personnel practices.

For fiscal year 2015, I once again ask the Congress to provide the funds I have identified as necessary for the Court to sustain current services and to continue to operate in an efficient and effective manner. With this goal in mind, the Federal Circuit's 2015 budget request totals \$33,105,000, which includes \$2,893,000 for mandatory expenses and \$30,212,000 for discretionary expenses. The discretionary request of \$30,212,000 is slightly less than a 2.1 percent increase over the fiscal year 2014 enacted appropriation for discretionary expenses of \$29,600,000.

For the fourth fiscal year in a row, the Federal Circuit's budget request includes no request for program increases. It requests only sufficient funds to provide for essential, ongoing operations of the Court. One hundred percent of the budget increase is to pay for adjustments to the base to help maintain current services. These adjustments include funds for projected salaries and benefits increases for staff, staff

promotions and within-grade increases, as well as for general inflationary adjustments and for library services and computer-assisted legal research.

While the Court recognizes and appreciates the relentless pressure on Congress to reduce and contain government spending, the Court also recognizes that the administration of justice would suffer if funds are insufficient to keep the Court properly staffed and fully functional. The Federal Circuit currently has sufficient resources to address the caseload. But, as I reported to you last year, two structural changes have occurred in litigation within the jurisdiction of the Court, which threaten to increase the Federal Circuit's caseload, perhaps exponentially. Though we have only begun to see the impact, the structural changes are in place to drive the caseload up.

First, as a result of the *Leahy-Smith America Invents Act*, Pub. L. No. 112-29 enacted on September 16, 2011, the Federal Circuit expects to see a dramatic increase in its patent caseload that will persist into the foreseeable future. The U.S. Patent and Trademark Office (USPTO) is implementing the America Invents Act (AIA) in a manner that makes it easier for American entrepreneurs and businesses to bring their inventions to the marketplace sooner, converting their ideas into new products and new jobs. As you know, the intent of the AIA is to help companies and inventors avoid costly delays and unnecessary litigation, and let them focus instead on innovation and job creation. A number of important provisions of the law went into effect on September 16, 2012, twelve months after the law was enacted.

The success of the AIA depends on the Federal Circuit, which will have to resolve each of the many statutory interpretation questions posed by the new law. In addition, the AIA will provide for clearing a substantial backlog of some 25,000 USPTO cases through the newly created Patent Trial and Appeal Board (PTAB). All of the appealed cases of the PTAB will come to the Federal Circuit for review. While there are already more than 800 cases pending at the PTAB, the Court is not yet able to project with accuracy a precise number for the increase in patent appeals at the Federal Circuit. Generally, however, the work of the PTAB should be expected to produce an annual increase of from four hundred to several thousand additional patent cases per year for review by the Federal Circuit.

Importantly, these cases are typically the most complicated and time consuming cases on the Court's docket because the patents at issue are technically complex. Consequently, the Federal Circuit believes there will always be a considerable case backlog at the USPTO and a sustained increase in our caseload via the PTAB. To address the immense backlog, the USPTO has substantially increased the number of administrative judges and attorneys in the solicitor's office. While facing the potential for such a structural increase in our caseload is daunting, my assessment is that it is too soon to request additional resources. As a result, in our fiscal year 2015 budget, the Federal Circuit has not requested any additional funding to address this approaching tsunami of appeals.

At the same time, however, I am keenly aware that the Federal Circuit would be defeating the purpose of the AIA if delays occur in the appeal process that prevent American entrepreneurs and businesses from converting their inventions and ideas into new products and new jobs as swiftly as possible. It would indeed be unfortunate if the Federal Circuit was unable to process appeals from the PTAB expeditiously due to insufficient staff resulting from insufficient funds. I will monitor the development of the Federal Circuit's caseload carefully and I will not hesitate to notify you of any need to increase resources.

Second, the United States Department of Veterans Affairs (VA) is in the process of changing its procedures to accelerate processing disability cases and pension claims in order to reduce the agency's backlog of more than 100,000 claims pending before the Board of Veterans Appeals (BVA). Improved processes and procedures implemented by the VA will have a real impact on the backlog, and the VA's goal is to eliminate the disability claims backlog entirely in 2015. The VA is in the process of hiring about 100 additional staff counsel and 19 administrative law judges to process appeals. As the BVA clears the backlog, the United States Court of Appeals for Veterans' Claims (CAVC) will see an increase of as many as 1,000 cases by 2015.

Those veterans whose appeals fail at the CAVC are likely to appeal to the Federal Circuit, and I fully expect that the number of appeals received by the Federal Circuit will also increase by fiscal year 2015. Recognizing that delayed justice for our veterans and their families due to

insufficient funds is unacceptable, I will monitor the caseload increases from the CAVC and I will notify you as soon as I believe additional resources are needed at the Federal Circuit.

Though not a structural change in litigation or agency practice, a third source of increase in the Federal Circuit's caseload is imminent, though it will likely be temporary. The sequestration in fiscal year 2013 resulted in a flood of furlough appeals being filed with the Merit Systems Protection Board (MSPB) by federal employees who were furloughed because of automatic spending cuts. As of September 10, 2013, more than 32,000 furlough appeals had been filed at the MSPB. This is in addition to an average of 6,000 appeals received annually on other matters that are appealable to MSPB under the law. If their cases fail at the MSPB, federal employees can appeal to the Federal Circuit. It is impossible to predict with certainty how many of the furlough appeals might survive MSPB review, but it is prudent to plan for a significant number of the cases that fail at the MSPB to be appealed to the Federal Circuit.

As with the AIA patent and VA case backlogs, the Federal Circuit has not requested or received any additional resources to address the likely increase of furlough appeals from the MSPB. While I fully expect a considerable volume of these MSPB appeals to begin to arrive at the Federal Circuit in fiscal year 2015, I am unable to estimate with any certainty what additional resources will be required this fiscal year to address the MSPB cases. To address these cases, I will rely on prudent management of the resources you have provided, recognizing that it will be my duty to request more when it becomes clear that more is needed.

My final comment is about the Court's plan to reduce facilities costs. This plan is required by House Report 113-172 and it is being developed in consultation with the Judicial Conference of the United States and the General Services Administration. The Court's plan will develop actionable alternatives to reduce, reallocate and reconfigure existing space. In order to accomplish the goal of reducing space in order to reduce costs, the Federal Circuit may have to request additional funds targeted for facilities alteration or perhaps new leases.

Chairman Crenshaw, I would be pleased to provide any additional information that the Committee may require or to meet with Committee members or staff to discuss our budget request in further detail. Thank you for this opportunity to present my views.

STATEMENT OF DONALD C. POGUE
Chief Judge
UNITED STATES COURT OF INTERNATIONAL TRADE
before
The Subcommittee on
Financial Services and General Government of the
Committee on Appropriations of the
United States House of Representatives

March 26, 2014

Chairman Crenshaw, Representative Serrano, and Members of the Committee:

Thank you for once again providing me with the opportunity to submit this statement on behalf of the United States Court of International Trade, which is established under Article III of the Constitution with exclusive nationwide jurisdiction over civil actions arising out of the administration and enforcement of the customs and international trade laws of the United States. As you know, the Court has its roots in the uniformity requirement of Article I, Section 8 of the Constitution ("all duties, imposts and excises shall be uniform throughout the United States"), and in that way has a vital role that contributes to the nation's economic strength.

I am happy to report that the Court's Fiscal Year 2015 budget request of \$19,788,000 , which includes \$1,981,000 for mandatory expenses and \$17,807,000 for discretionary expenses, represents a net decrease of \$1,393,000, or a 7.3 percent decrease from the fiscal year 2014 enacted discretionary appropriation of \$19,200,000. The primary reason for this reduction is an 18 percent, or \$1,476,191, decrease in rent charges from fiscal year 2014 due to a reduction in the shell rate. This reduction is driven exclusively by the vagaries of the appraisal process. Having made no space alterations in several decades, the Court

nonetheless faced a dramatic rent spike after a very high 2007 appraisal. The most recent 2012 appraisal was significantly lower and thus has precipitated a decrease in the Court's rent bill. While it represents an overall decrease, the request does contain some increases in individual spending areas. However, these increases reflect only the necessary adjustments to base to maintain current services, fund essential on-going operations and initiatives, provide for appropriate adjustments in pay and benefits, and respond to vacancies in certain senior positions within the Clerk's office. In addition, there are increases in costs paid to the Federal Protective Service (FPS) for building basic and building-specific security surcharges for the Court's pro-rata share of upgrading, operating and maintaining systems for the critical and necessary security of the Federal Complex in lower Manhattan and to the U.S. Marshals Service for the Court's internal security officers.

I would like to emphasize that the Court remains committed, as it has in the past, to proactively working with GSA in the reduction of rent costs, in the Court's facilities upgrade program, and in space utilization. Due to our efforts in this area and to the effects of the lower 2012 appraisal that resulted in a lower shell rate, the Court was able to realize a rent savings of \$1,265,100 in fiscal year 2014. These rent savings, combined with the temporary existence of unfilled vacancies and the Court's continued commitment to an approach of conservatively managing its financial resources, enabled the Court, under sequestration, to maintain necessary staffing and services in fiscal year 2014.

As a matter of internal operating principles, the Court routinely engages in cost containment strategies in keeping with the overall administrative policies and practices of the Judicial Conference, particularly regarding security costs, equipment costs, technology, contractual obligations, and personnel. This is consistent with the Court's long-standing policy

conferencing system, data network and voice connections, and virtual Private Network System (VPN); and (5) upgrading its digital recording system.

In Fiscal Year 2014 the Court plans to expend funds on essential IT projects to: (1) purchase network servers that will host the Court's virtual environment; (2) continue its support of its video conferencing system, digital recording system and data network and voice connections; (3) upgrade and support existing software applications, including the on-line library/catalog inventory system; (4) purchase new software applications to ensure the continued operational efficiency of the Court; (5) provide Court access to the Judiciary Data Communications Network (DCN); and (6) replace computer desktops, monitors and printers in accordance with the judiciary's cyclical replacement program. In other areas, the Court will, in Fiscal Year 2014, once again be able to continue its long standing commitment to provide developmental and educational programs for staff on subjects pertaining to job-related skills and technology.

In Fiscal Year 2015, the Court will remain committed to using its carry-forward balances in the Judiciary Information Technology Fund to continue its information technology initiatives and support the Court's short-term and long-term information technology needs. Additionally, the Court will continue its commitment to identifying ways in which to better utilize common and individual office space so as to maximize the use and functionality of the internal space of the Courthouse. This effort is part and parcel of the Court's on-going rent review process. The Court will also continue its cyclical replacement and maintenance program for equipment, furniture, and offices, so as to help extend the useful life of equipment and furnishings. Moreover, the Fiscal Year 2015 request once again includes funds for the continued upgrade, support and maintenance of the Court's security systems. Further, the Court will seek to

of requesting only funds that are absolutely needed to carry out its judicial responsibilities and of cross-training staff to ensure the best use of our resources. The Court will continue this commitment to seek funding only for increases in pay, benefits and other inflationary factors, and for essential on-going operations and initiatives of the Court.

Despite this conservative approach to spending, the Court continues to meet the objectives set forth in its Strategic Plan through the use of its annual appropriation and the Judiciary Information Technology Fund. These objectives provide access to the Court through the effective and efficient delivery of services and information to litigants, the bar, public, judges, and staff. As a national court, this access is critical to realizing the Court's mission to resolve disputes by (1) providing cost effective, courteous, and timely service; (2) providing independent, consistent, fair, and impartial interpretation and application of the customs and international trade laws; and (3) fostering improvements in customs and international trade law and practice, as well as in the administration of justice.

Specifically, technology continues to be a critical component of the Court's commitment to high quality service to its various constituencies. To this end, the Court continues to support and maintain its viable information technology and cyclical maintenance, upgrade, and replacement programs to ensure that the Court's infrastructure will continue to support its present and future technological and telecommunications needs. In fact, during Fiscal Year 2013, the Court used its Judiciary Information Technology Fund to successfully strengthen its technological capabilities by: (1) implementing an Integrated Telephone System; (2) installing WiFi throughout the courthouse and thereby enhancing network connectivity to wireless devices; (3) migrating from a Netware Operating System to a Microsoft Operating System in order to improve the Court's network facilities; (4) continuing its support of its video

continue its efforts to address the educational needs of the bar and Court staff. Lastly, I would like to emphasize that the Court, in Fiscal Year 2015, will build on its prior efforts in cost saving negotiations of contracts with GSA, FPS, and public and private companies.

Once again, I personally extend my deepest thanks and appreciation to Congress for, historically, recognizing the needs of the Court by providing adequate funding to maintain current services. I look forward to continuing to work with you as the Court maintains its commitment to contain costs and expend funds in a conservative, cost-effective manner.

The Court's "General Statement and Information" and "Justification of Changes," which provides more detailed descriptions of each line item adjustment, were submitted previously. If the Committee requires any additional information, we will be pleased to submit it.

**Statement of Judge Patti B. Saris
Chair, United States Sentencing Commission
For the Hearing on the Judiciary's Fiscal Year 2015 Budget Request
Before the House Committee on Appropriations,
Subcommittee on Financial Services and General Government
March 26, 2014**

Chairman Crenshaw, Ranking Member Serrano, and members of the Committee, the United States Sentencing Commission (Commission) thanks you for the opportunity to submit this statement in support of its appropriations request for fiscal year 2015. The Commission's statutory mission to ensure sound and just federal sentencing policy while prioritizing limited resources to best ensure public safety, as set forth in the Sentencing Reform Act of 1984, continues to be of tremendous importance. Full funding of the Commission's fiscal year 2015 request will ensure that the Commission can continue to fulfill its statutory mission.

RESOURCES REQUESTED

The Commission is requesting \$16,894,000 for fiscal year 2015, representing a 4.3 percent increase over the fiscal year 2014 appropriation of \$16,200,000. The Commission fully appreciates the serious budget constraints facing the nation and the need for government agencies to continue to allocate their resources responsibly. Accordingly, the Commission requests an increase over its fiscal year 2014 budget appropriation only to account for inflationary increases and adjustments for personnel costs, and to maintain current services.

JUSTIFICATION FOR COMMISSION'S APPROPRIATIONS REQUEST

The statutory duties of the Commission include: (1) promulgating sentencing guidelines to be determined, calculated, and considered in federal criminal cases; (2) collecting, analyzing, and reporting sentencing data systematically to detect new criminal trends, to determine if federal crime policies are achieving their goals, and to serve as a clearinghouse for federal sentencing statistics; (3) conducting research on sentencing issues and serving as an information center for the collection, preparation, and dissemination of information on federal sentencing practices; and (4) providing specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community on federal sentencing issues, including application of the guidelines. Of particular importance during this time of budget constraints is the Commission's continued statutory obligation to prescribe sentencing guidelines that will minimize the overcapacity of federal prisons.

The Commission sits at the intersection of all three branches of government and synthesizes the interests of the three branches in order to promote the purposes of sentencing as set forth in the Sentencing Reform Act of 1984 and as modified by the Supreme Court's decision in *United States v. Booker*¹ which made the federal sentencing guidelines advisory. The Commission continues its core mission to promulgate new guidelines and guideline amendments in response to legislation, sentencing data, original research, and feedback from sentencing

¹ 543 U.S. 220 (2005).

courts, Congress, the Executive Branch, federal defenders, and others in the federal criminal justice system.

Although the demand for the Commission's work product, sentencing data and analyses, and services continues to increase, the Commission is not requesting any program increases for fiscal year 2015. The Commission appreciates the funding Congress has previously provided and pledges to continue to efficiently maximize its allocated resources while fulfilling its many statutory duties. In fact, the Commission analyzes more than twice as many cases per year as it did in the 1990s, while maintaining the smallest staff it has had since 2001. The Commission is not just dedicated to prudently utilizing its own allocated resources, it is committed to assisting Congress in its efforts to reduce the costs of incarceration while maintaining or increasing public safety.

SENTENCING POLICY DEVELOPMENT

In fiscal year 2015, the Commission intends to continue its focus, pursuant to its authorizing statute at 28 U.S.C. § 994(g), on the issue of reducing costs of incarceration and overcapacity of prisons. The Commission is in the process of reviewing proposed guideline adjustments intended to reduce prison costs and populations without adversely affecting public safety. Specifically, the Commission is reexamining federal drug sentences to determine whether adjustments to the quantity-related guideline levels across all drug types would be appropriate. The Commission also expects to promulgate guideline amendments to implement the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4. The Commission's other proposed amendments include statutory and guideline definitions resolving circuit splits, sentences where a defendant is subject to an undischarged term of imprisonment, and alien smuggling. The Commission expects to address these issues with guideline amendments that will become effective in fiscal year 2015 absent congressional action to the contrary and stands ready to implement any new legislation enacted by Congress in fiscal years 2014 and 2015.

In addition, the Commission is continuing multi-year studies of the sentencing guidelines covering economic crimes, the statutory and guideline definitions relating to the nature of a defendant's prior conviction, recidivism in the federal criminal justice system, and federal sentencing practices pertaining to violations of conditions of probation and supervised release. Careful consideration of these areas is consistent with the Commission's overarching goal of reducing costs of incarceration and overcapacity of prisons. The Commission expects to identify specific potential reforms that adhere to the goals of the Sentencing Reform Act while preserving public safety and reducing costs.

In fiscal year 2015, the Commission also will continue working to strengthen the federal sentencing system consistent with the findings and recommendations set forth in three major recent reports to Congress on mandatory minimum penalties, the impact of *Booker* on federal sentencing, and federal child pornography offenses. The Commission's October 2011 report on mandatory minimum penalties found that certain mandatory minimum penalties apply too broadly, are set too high, or both, to warrant the prescribed mandatory minimum penalty for the full range of offenders who could be prosecuted under the particular statute. Among the several specific recommendations set forth in the report for congressional consideration are the possible

expansion of the statutory safety valve at 18 U.S.C. § 3553(f) to certain non-violent drug offenders who receive two, or perhaps three, criminal history points under the guidelines; possible consideration of expanding the safety valve to other low-level, non-violent offenders convicted of other offenses carrying mandatory minimum penalties; elimination of the mandatory “stacking” provision requirement for multiple violations of 18 U.S.C. § 924(c); and reassessment of both the severity and scope of certain recidivist statutory provisions. The report has provided data and informed new data requests and analysis utilized by Congress in its evaluation of recent legislative proposals.

In fiscal years 2013 and 2014, the Commission submitted testimony to Congress and updated its recommendations on mandatory minimum penalties to address legislation before both the House and Senate. In fiscal year 2014, the findings from the mandatory minimum report and the Commission’s testimony on mandatory minimums have been cited extensively by those considering legislative reforms. The Commission is pleased that bipartisan legislation has been introduced in both the House and Senate that is consistent with many of these recommendations and looks forward to working with Congress on these and other measures to reduce the costs of incarceration without compromising public safety.

The Commission’s December 2012 report on *Booker* found that the sentencing guidelines remain the essential starting point for all federal sentences and continue to exert significant influence on federal sentencing. However, the report showed that regional disparities have increased, demographic characteristics are now more strongly correlated with sentencing outcomes than during previous periods studied, and, for some offense types, the influence of the guidelines has diminished since *Booker*. In fiscal year 2013, the *Booker* report was explicitly cited by the United States Supreme Court in *Peugh v. United States*, 569 U.S. ___, 133 S. Ct. 2072 (2013), a decision which held that the Ex Post Facto Clause applies to the guidelines and reaffirmed the continued importance of the guidelines, referring to them as the “lodestone” of federal sentencing.

The Commission’s December 2012 report on federal child pornography offenses, which included extensive legal and scientific review, data analysis, and expert testimony, concluded that the guideline for child pornography possession, receipt and distribution offenses, which had not been comprehensively revised in a decade, is now outdated, particularly in light of changes in how child pornography offenders now use technology. The report recommended comprehensive revisions to the guideline to better reflect varying degrees of offender behavior, and the Commission stands ready to work with Congress on those recommendations.

In late fiscal year 2014, the Commission expects to begin publishing work based on a study examining the circumstances that correlate with increased or decreased recidivism. That multi-year study also will require the Commission to increase and refine its collection of data on modifications and revocations of probation and supervised release. The Commission anticipates that the recidivism study could potentially form the basis for recommendations that would result in reduced costs of incarceration and overcapacity of the federal prison system. The Commission also is continuing a multi-year study of several statutory and guideline definitions that are the sources of significant litigation that cause judicial inefficiencies, including “crime of violence,” “aggravated felony,” “violent felony,” and “drug trafficking offense.”

In fiscal year 2015, as mandated by the Fair Sentencing Act of 2010, Pub. L. No. 110–220, the Commission anticipates submitting a report to Congress on the recidivism of crack cocaine offenders. This study, in conjunction with the Commission’s other work on recidivism, will help to inform Congress in its efforts to preserve public safety while identifying where costs can be reduced.

COLLECTING, ANALYZING AND REPORTING SENTENCING DATA

To fulfill its statutory duties to collect, analyze and report federal sentencing statistics and trends, the Commission each year collects data regarding every felony and class A misdemeanor offense sentenced during that year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in every criminal case: the charging document, the plea agreement, the presentence report, the judgment and commitment order, and the statement of reasons form.² For each case, the Commission analyzes these documents and collects information of interest and importance to the federal criminal justice system. The high volume of federal cases sentenced annually significantly affects the Commission’s data collection, analysis, and reporting efforts. The Commission received more than 375,000 documents for more than 80,000 original sentencings in fiscal year 2013. To put this caseload in perspective, in fiscal year 1995 the Commission received documentation for 38,500 cases sentenced under the guidelines.

Since March 2008, the Commission also has collected real-time data from the courts on over 25,500 motions filed for retroactive application of its 2007 crack cocaine amendment. In November 2011, the Commission began collecting similar data on the retroactive application of its permanent amendment implementing the Fair Sentencing Act. That guideline amendment took effect on November 1, 2011.

As of January 2014, the Commission has collected data on more than 12,551 cases in which a modification of the sentence imposed was sought under the 2011 amendment to the sentencing guidelines that implemented the provisions of the Fair Sentencing Act and which the Commission voted to apply retroactively. The Commission anticipates eventually receiving documentation on more than 15,000 motions for retroactive application of the 2011 crack cocaine amendment. These documents will form the basis for a study on recidivism of crack cocaine offenders as contemplated by the Fair Sentencing Act, which requires the Commission to submit a report to Congress five years after its enactment (August 3, 2010).

In fiscal year 2013, the Commission began to improve and refine its collection of data on modifications and revocations of probation and supervised release. This effort in future years may require the development of standardized sentencing documents for the courts to use in coordination with the Administrative Office of the United States Courts to promote the submission of this data to the Commission. Such data is increasingly needed to form the basis of sound cost-saving policy regarding the length of appropriate terms of supervised release, use of

² See 28 U.S.C. § 994(w)(1), which requires the chief judge of each district court, within 30 days of entry of judgment, to provide the Commission with: (1) the charging document; (2) the written plea agreement (if any); (3) the Presentence Report; (4) the judgment and commitment order; and (5) the statement of reasons form.

alternatives to incarceration without risk to public safety, and effective identification of those at greatest risk of recidivism.

The Commission reports and disseminates to the public the sentencing information it collects and analyzes in several ways. Analyses of the data extracted from the sentencing documents it receives are reported in the Commission's Annual Report and Sourcebook of Federal Sentencing Statistics (Sourcebook). In order to provide the most timely information on national sentencing trends and practices, the Commission also disseminates on its website key aspects of this data on a quarterly basis for the current fiscal year, and provides trend analyses of the changes in federal sentencing practices over time.

In fiscal year 2014, the Commission is making additional analyses available in its online Interactive Sourcebook. The Interactive Sourcebook, introduced in fiscal year 2012, allows users to re-create and customize the tables and figures presented in the printed Sourcebook, for example by circuit, district, or state, or by combining several years of sentencing data into one analysis. The new analyses include several new figures that examine trends in sentencing data over time.

Since fiscal year 2012, the Commission has made its prison and sentencing impact assessments available to the public on its website. As required by 28 U.S.C. § 994(g) and 18 U.S.C. § 4047, when the Commission considers amendments to the guidelines, it considers the impact of any changes on the federal prison population. In addition, the Commission often is asked by Congress to complete prison and sentencing impact assessments for proposed legislation. The website contains information starting with analyses completed during the fiscal year 2012 amendment cycle. The Commission expects to continue in fiscal years 2014 and 2015 to make new prison sentencing impact assessments available.

At the request of Congress, the Commission also provides specific analyses related to proposed and pending legislation using real-time data and analyses of sentencing trends. These assessments are often complex and time-sensitive, and require highly specialized Commission resources. Such requests have intensified in frequency and complexity in fiscal year 2014 as Congress has begun considering legislation that would significantly impact sentencing policy. In addition, the Commission responds to more general data requests from Congress on issues such as drugs, immigration, fraud, and sex offenses and provides district, state-wide, and circuit data analyses to House and Senate Judiciary Committee members and, on an as-requested basis, to other members of Congress.

The Commission also provides valuable data to federal judges. For example, the Commission produces unique data and information about each federal judicial circuit and district that form the basis of data compilations that are frequently used during new judge orientation, by chief judges, and for congressional briefings, and are made available on the Commission's website. The Commission also provides to each chief district judge and each chief circuit judge a yearly analysis that compares the sentencing practices of the district or circuit with the nation as a whole. The Commission's ability to provide these analyses on demand and with real-time data provides a unique resource to judges.

The Commission has been able to accommodate the threefold increase in sentencings and to broaden the public accessibility of its sentencing data and analyses without increasing the full-time employee (FTE) positions devoted to data collection and analysis because it has been modernizing its systems over several years. In recent years, the Commission advanced from an internal electronic data transmission submission system to a web-based system and improved its processes related to the receipt and analysis of sentencing data. By the end of fiscal year 2013, 77 out of 94 districts were using the web-based system.

The Commission greatly appreciates the funding it has received from Congress to undertake its modernization efforts in the area and notes that full funding of the Commission's fiscal year 2015 budget request will ensure these systems continue to operate efficiently and effectively.

CONDUCTING RESEARCH

Research is a critical part of the Commission's overall mission. The Commission's research staff regularly analyzes the current and prior fiscal years' data to identify the manner in which the courts are sentencing offenders and using the guidelines. The Commission routinely uses these analyses when considering proposed changes to the guidelines. Similarly, some analyses are published by the Commission as a resource for policy-makers and the criminal justice community.

In fiscal year 2013, the Commission launched a new research publications series called "United States Sentencing Commission Quick Facts." The Quick Facts series is designed to provide the basic facts about a single area of federal crime in an easy-to-read, two-page format. It is part of a larger effort to make Commission data more available to the courts, Congress, the press, and the public. The Commission released ten publications in the Quick Facts series in fiscal year 2013 covering topics including drugs, immigration, fraud, and mandatory minimum penalties. The Commission will release more of these publications in fiscal years 2014 and 2015 and plans to update them regularly. The Commission also plans to issue other short, user-friendly publications in fiscal years 2014 and 2015.

In fiscal year 2013, the Commission began making individual offender datafiles from fiscal years 2002 through 2012 available on its website. These analyses were a critical component of the Commission's recent reports to Congress and they will also be relied upon for the Commission's upcoming work on recidivism by federal offenders.

TRAINING AND OUTREACH

The Commission continues to fulfill its statutory duty to provide training and specialized technical assistance on federal sentencing issues, including application of the guidelines, to federal judges, probation officers, staff attorneys, law clerks, prosecutors, and defense attorneys, by providing educational programs around the country throughout the year. The Commission has greatly expanded these training and outreach efforts in direct response to changes resulting from *Booker* and subsequent case law. In fiscal year 2013, for example, commissioners and Commission staff conducted training programs in all twelve circuits and most of the 94 judicial

districts, providing instruction and guidance to more than 5,900 judges, probation officers, prosecutors, defense attorneys and others throughout the year. In fiscal year 2013, the Commission also offered a series of eight regional training workshops attended by over 675 people in order to further accommodate the limited training and travel budgets throughout the judiciary. Throughout the year Commissioners and Commission staff also participated in academic programs, symposia, and circuit conferences as part of the ongoing discussion of federal sentencing issues. The Commission is also relying increasingly on distance and online learning as part of cost containment efforts and intends to increase the number of sentencing-related webinars and training videos on its website throughout fiscal years 2014 and 2015.

SUMMARY

The Commission remains uniquely positioned to assist the federal criminal justice community, including Congress, in ensuring sound and just federal sentencing policy and prioritizing limited resources to best protect the public safety. Located in the judicial branch and composed of federal judges, individuals with diverse experience in the federal criminal justice community, and *ex officio* representatives of the Executive Branch, the Commission is an expert, bipartisan body that works collaboratively with all three branches of government on matters of federal sentencing policy.

As evidenced from the discussion above, demand for the Commission's various work products have greatly increased since *Booker*. The Commission has responded in recent years by placing a high priority on increasing public access to its sentencing data, information, analyses, and training. The Commission has achieved this increased public access in great part by expanding the availability of resources on its website, and the Commission plans to continue this trend in fiscal year 2015 and beyond.

The Commission appreciates the funding it has received from Congress and respectfully submits that full funding of its fiscal year 2015 appropriations request of \$16,894,000 will ensure that the Commission can continue to fulfill its various statutory missions efficiently and effectively.

STATEMENT OF HON. JEREMY D. FOGEL, DIRECTOR
FEDERAL JUDICIAL CENTER
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
OF THE COMMITTEE ON APPROPRIATIONS
OF THE HOUSE OF REPRESENTATIVES

March 26, 2014

Chairman Crenshaw, Representative Serrano, and members of the Committee:

My name is Jeremy Fogel. I have been a United States District Judge in the Northern District of California since 1998 and the Director of the Federal Judicial Center since October 2011. I appreciate the opportunity to provide you with this statement in support of our 2015 appropriations request. Because our request is modest, this statement is brief. The Center's Board, which the Chief Justice chairs and on which the Director of the Administrative Office of the U. S. Courts serves, approved this request in October 2013.

Our request for 2015 is \$26,959,000--an increase of \$759,000 (or 2.9%) above our fiscal year 2014 appropriations level (\$26,200,000). The \$759,000 increase is entirely for standard adjustments to our 2014 base. We are not requesting any funds for program growth or enhancements.

The Center's Contribution to the Courts

The Center's statutory mission is to further the development and adoption of improved judicial administration in the federal courts. We carry out our mission through educational programs for judges to help them effectively and fairly dispose of complex litigation, and for court managers and staff to help them operate efficiently and to maintain services to the public, including supervision of federal criminal defendants and offenders. Our independent, impartial policy research on federal litigation and judicial administration contributes directly to changes in procedures and policies that make litigation and court operations more efficient.

The need for education and training remains great. Educating judges about new legal developments, ethical requirements and effective case management practices

always has been and will continue to be necessary. Judges and court managers also seek additional education in effective court management to help address the challenging fiscal climate, use technology effectively and maintain a productive workforce. We rely increasingly on distance education technologies and are constantly working to expand our capabilities in that area.

In 2013, the always demanding work of the federal judiciary was made more difficult by fiscal uncertainty and austerity. The effects of sequestration were especially painful, with many courts being forced to lay off long-term employees and reduce or eliminate services. The long budget standoff in Congress added acute anxiety to an environment in which morale already was severely strained. The recent bipartisan budget agreement offers at least some prospect of a better year in 2014.

The Center played an important role during this time. We offered guidance to chief judges about working collaboratively with court unit executives on budget and personnel issues, and to unit executives about effective implementation of shared administrative services plans. We held the first-ever concurrent conferences of clerk's office executives from both district and bankruptcy courts, much of which focused on the daunting leadership and management challenges presented by the situation. And we provided numerous in-court programs and consultations to courts on specific issues arising from layoffs and service reductions.

At the same time, we were able to offer most of our regular educational programs that help judges and court staff to manage the courts efficiently and resolve cases fairly. We continued our many research projects, most of which are requested by Judicial Conference committees and help to inform the decisions of those committees and the policy recommendations they make to the Judicial Conference.

Thank you for your careful consideration of our request. I hope that the brevity of this statement does not minimize in any way the vital contribution the Center makes to support the work of the federal courts. I respectfully urge you to find a way to provide the Center with the modest 2.9% increase --- simply a current services funding level --- it needs in 2015. I would be pleased to respond to any questions you may have.

BRIEF HEARING RECESS

Mr. CRENSHAW. Judge Bates, I think we will save your remarks for when we come back. There is a little less than 2 minutes left. There are three votes, actually, so it will take about 15 minutes, but we will come back, and some of the other members that are in other subcommittee meetings, we will see how all that goes, but if you don't mind, I apologize, but we don't plan the floor schedule around here. So we will be back as quick as we can. So the hearing will be in recess. Thanks.

Judge BATES. That is fine. We appreciate it.

[Recess.]

Mr. CRENSHAW. The meeting will come back to order. There will probably be some members straggling in, in or out, but let's continue.

And, Judge Bates, the floor is yours.

JUDGE BATES' OPENING STATEMENT

Judge BATES. Chairman Crenshaw, Representative Serrano, I am pleased to appear before you to present the fiscal year 2015 budget request for the Administrative Office of the U.S. Courts and support the overall request for the judicial branch. And I join Judge Gibbons in thanking you and the other members of the committee for the support that you have provided to the judiciary during these difficult economic times, which has enabled us now to address critical funding shortfalls in the Defender Services Program and in the courts nationwide.

Last summer, the Chief Justice appointed me as Director of the Administrative Office. I have been a Federal judge since 2001, serving on the United States District Court for the District of Columbia and as the presiding judge of the Foreign Intelligence Surveillance Court until early last year. I continue to carry a reduced caseload on the D.C. District Court, but my primary focus now is the management of the Administrative Office.

I would like to thank the committee as well for its past support of the judiciary's Capital Security Program, funded within the General Services Administration appropriation in both fiscal years 2012 and 2013. The Capital Security Program was designed to address the most serious security deficiencies in existing courthouses where renovation is a viable alternative to new construction. Unfortunately, the program was not funded in fiscal year 2014.

To give you some background, this program was an outgrowth of the judiciary's long-range facilities planning process and one of our first cost-containment initiatives begun back in 2008. Under the new process, greater emphasis is placed on space, rather than security, when determining the need for a new courthouse. As a result, the Capital Security Program provides a way for districts to address immediate security deficiencies in a timely and significantly less costly manner than constructing a new courthouse. We were pleased to see that the President's budget includes \$20 million for this program in fiscal year 2015, and we urge the committee to support the GSA request in its appropriations bill.

Funding for the judiciary's Capital Security Program should not, however, be a substitute for new courthouse construction. While

that program may address a court's immediate security deficiencies, it does nothing to address those courts that combine both security deficiencies and an extreme lack of space. In these circumstances, the only resolution is to build a new courthouse or an annex to meet the operational needs of the court.

The judiciary does not itself request funding for the construction of new courthouses. Because GSA builds our facilities, these monies come under the jurisdiction of the executive branch and are included in GSA's budget. Unfortunately, in 4 of the last 5 years, the President's budget has included no funding for courthouse construction. This year, the President's budget request for GSA includes \$745 million for new executive branch construction projects, but no funding for any new courthouse projects. This is particularly troublesome, given the efforts that the judiciary has taken to improve its courthouse planning with a focus on cost containment.

Attached to my written testimony is the judiciary's interim 5-year plan for courthouse projects for the next 5 fiscal years that I ask be included in the official hearing record. That plan lists the same construction priorities as the 2014 plan, except that the funding for Mobile, Alabama, provided through the Consolidated Appropriations Act has been eliminated from the list. Nashville, Tennessee, is now the judiciary's top courthouse priority in fiscal year 2015. We are very pleased that the President's budget includes funding for the Capital Security Program, but it is imperative that the judiciary also be able to move its courthouse construction program forward. We respectfully ask, therefore, that you include funding for a new Nashville courthouse in the GSA's Federal Buildings Fund in your fiscal year 2015 appropriations bill.

The Administrative Office was created by Congress back in 1939 to assist the Federal courts in fulfilling their mission to provide equal justice under law. The AO does not operate as a headquarters for the courts but rather provides administrative support to the Judicial Conference, its 25 committees, over 2,300 judicial officers and more than 28,000 court employees. Service to the courts has been and remains our basic mission.

In January 2011, a task force began looking at ways that the AO could ensure that it would be able to meet its core responsibilities during this era of fiscal constraint and reduced resources. Last summer, a significant restructuring and consolidation was announced to be implemented by the end of the fiscal year, and our new organizational structure is now in place and functioning smoothly. The goals of the AO restructuring were to reduce operating costs and duplication of effort, simplify the agency's administrative structure, create opportunities for greater efficiencies, and enhanced service to the courts, the Judicial Conference and the public. That new structure is leaner and more integrated.

The fiscal year 2015 appropriations request for the AO is \$84,399,000. That is a \$3.2 million increase, which supports a current services budget. There are no additional staff or program increases included in this request. Over the last few years, the AO has downsized its workforce by 8 percent through attrition, buy-outs and early outs, imposing hiring caps and leaving positions vacant, and through cost-containment efforts. More recently, the AO's reorganization provides us with the flexibility to better align our

existing staff in order to carry out the AO's statutory responsibilities.

I recognize that fiscal year 2015 will be another difficult year as the committee attempts to meet the funding needs of the agencies and programs under your purview. In making your funding decisions, I hope you will consider the significant role that the AO plays in supporting the courts and the mission of the judiciary.

Thank you again for the opportunity to be here today, and I would be pleased to answer any questions.

[The information follows:]

**STATEMENT OF JUDGE JOHN D. BATES, DIRECTOR
ADMINISTRATIVE OFFICE OF THE U.S. COURTS
BEFORE THE
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES**

March 26, 2014

INTRODUCTION

Chairman Crenshaw, Representative Serrano, and members of the Committee, I am pleased to appear before you to present the fiscal year 2015 budget request for the Administrative Office of the United States Courts (AO), and to support the overall request for the entire Judicial Branch.

Before I begin, I would like to join Judge Gibbons in thanking you and the Committee for the support you have provided the Judiciary during these difficult economic times. We fully recognize the funding constraints under which you have had to write your bills and deeply appreciate the resources you have provided the Judiciary. In particular, your support of two funding anomalies for the Judiciary in the October 2013 short-term Continuing Resolution, and the full year funding provided in the fiscal year 2014 omnibus appropriations bill, has enabled us to address critical funding shortfalls in the Defender Services program and in the courts nationwide.

AO LEADERSHIP TRANSITION

Last summer, on July 1st, the Chief Justice appointed me Director of the Administrative Office of the U.S. Courts. I have been a federal judge since 2001, serving on the U.S. District Court for the District of Columbia. In 2006, I was appointed to the U.S. Foreign Intelligence Surveillance Court, serving as the presiding judge from May 2009 until February of last year when I completed my term on that court. I continue to carry a reduced caseload on the D.C. District Court, but my primary focus is the management of the AO.

I arrived at the AO in the midst of sequestration, immediately having to address the myriad of issues that accompanied the significant funding shortfalls impacting the AO as well as court operations nationwide. Not only were we managing the impact of sequestration in fiscal year 2013, but we needed to address the possible impact of additional reductions in fiscal year 2014. Working closely with the Executive Committee of the Judicial Conference, as well as our Budget Committee, emergency measures were adopted in an attempt to minimize further erosion of court operations, and in particular, the Defender Services program.

TEMPORARY JUDGESHIP EXTENSIONS

The Judicial Conference is indebted to this Committee for authorizing extensions of expiring temporary Article III judgeships in the annual appropriations bill. This year, without your action, the authorization for nine existing temporary Article III judgeships would have expired. We cannot thank the Committee enough for its assistance in this regard. Without this provision, we risked losing judgeships in these courts upon the first vacancy – through death or retirement – occurring after their lapse date.

In fiscal year 2015, *all* existing temporary Article III judgeships will expire. The impacted courts are in the following judicial districts: Alabama-Northern, Arizona, California-Central, Florida-Southern, Hawaii, Kansas, Missouri-Eastern, New Mexico, Texas-Eastern, and North Carolina-Western. If the House and Senate Judiciary Committees are unable to preserve the expiring judgeships, I urge this Committee to include the necessary one-year extensions in its fiscal year 2015 appropriations bill. The workload in these districts is too great to risk losing judgeships that in all likelihood will take years to create and fill again.

CAPITAL SECURITY PROGRAM

I also would like to thank the Committee for its past support of the Judiciary's Capital Security Program (CSP), funded as a special emphasis program within the General Services Administration's (GSA) Federal Buildings Fund in fiscal years 2012 and 2013. Designed to address serious security deficiencies in existing courthouse buildings where physical renovations are viable alternatives to new construction, *this program has been a valuable, cost-effective solution to achieving greater security at existing courthouses nationwide*. Unfortunately, the Capital Security Program was not funded in fiscal year 2014.

The Capital Security Program was an outgrowth of the Judiciary's long-range facilities planning process, known as the Asset Management Planning (AMP) process – one of our first cost-containment initiatives begun in 2008. Under the AMP, greater emphasis is now placed on space availability for judicial functions rather than security when determining the need for new courthouses. As a result, the CSP provided a vehicle for districts to address serious security deficiencies in a timely and significantly less costly manner when constructing a new courthouse was unlikely.

Renovation projects that enhance security are selected for the program through an objective and collaborative review process that includes stakeholders from the local courts and their circuit judicial councils, GSA, the United States Marshals Service (USMS), the Judicial Conference's Space and Facilities Committee in consultation with the Judicial Security Committee, and the AO. The process includes assessing the building conditions and utilization, viability of long-term use, and structural capacity in order to identify cost-effective solutions that can be implemented in a timely manner.

Five projects are currently underway using FY 2012 and FY 2013 funding: Brunswick, GA; Benton, IL; Lexington, KY; San Juan, PR; and St. Thomas, VI. Additional projects were selected to participate in the program in FY 2014 and beyond. CSP studies, paid for by the Judiciary, have already been completed for these projects. These studies include a comprehensive review of existing courthouse conditions, security deficiencies, design solutions, and the associated project cost estimates. Local GSA and USMS offices have been active participants in this program and these reviews. At this point in time, there are four projects at courthouses with serious security deficiencies that have been studied and approved for funding in fiscal year 2014: Columbus, GA; Monroe, LA; Texarkana, TX/AR; and Raleigh, NC.

On February 5, 2014, I wrote to GSA Administrator Daniel M. Tangherlini, urging that funding for the Judiciary's Capital Security Program be included in GSA's fiscal year 2014 spend plan even though it is not identified for funding under the GSA Special Emphasis Programs in the fiscal year 2014 Consolidated Appropriations Act. As cost-efficiencies go, the Judiciary's CSP program is a huge success, correcting critical security deficiencies in most cases for \$5 to \$10 million. In addition, the program obviates the need to build new courthouse facilities that far exceed the cost of a CSP project.

The GSA did not include funding for capital security projects in its FY 2014 spend plan, but we were pleased to see that the President's budget includes \$20 million for this program in fiscal year 2015. I urge the Committee to support the GSA request, and include \$20 million for the Judiciary's Capital Security Program in the FY 2015 Financial Services and General Government Appropriations Bill.

COURTHOUSE CONSTRUCTION

Funding for the Judiciary's Capital Security Program should not, however, be a substitute for new courthouse construction. While CSP may address a court's immediate security deficiencies, it does nothing to address those courts that combine both severe security deficiencies and an extreme lack of space. In these circumstances, the only resolution is to build a new courthouse or annex to meet the operational needs of the court.

As you may be aware, the Judiciary does not request funding for the construction of new courthouses. Because GSA builds our facilities, these monies come under the jurisdiction of the Executive Branch and are included in GSA's budget. In some years this has worked fine, when the President has requested funding for courthouse projects as recommended in the Judicial Conference-approved *Five-Year Courthouse Project Plan*. Unfortunately, that is not the case this year, and it has not been the case in four of the last five years. The President's fiscal year 2015 budget request for GSA includes \$745.5 million for Executive Branch new construction projects, but no funding for any new courthouse construction projects on the Judiciary's *Five-Year Courthouse Project Plan*.

This is particularly troublesome in light of the strategic steps the Judiciary has taken to improve its courthouse facilities planning with a focus on cost containment. This effort has been

significant and has resulted in only the most important project recommendations going forward, and at a reduced cost. The designs of courthouses on the *Plan* will result in lower cost buildings due to the adoption of courtroom sharing policies and not building out courtrooms and chambers for projected judgeships. The Judiciary is committed to reducing space as illustrated by the three percent space reduction target approved by the Judicial Conference in September 2013.

Attached to my written testimony is the Judiciary's *Interim Five-Year Courthouse Project Plan for Fiscal Years 2015-2019 (Interim Five-Year Plan)*, that I ask be included in the official hearing record. This *Interim Five-Year Plan* lists the same courthouse construction priorities as the fiscal years 2014-2018 *Plan* except that it has been updated to reflect the funding of the Mobile, Alabama project in the Consolidated Appropriations Act of 2014, which we appreciate very much.

In 2008, when the Judicial Conference adopted the updated AMP process for long-range capital planning, it grandfathered the existing projects on the *Five-Year Plan* that had already received some amount of funding from Congress. However, as funding for new courthouses was held to a minimum and projects on the *Five-Year Plan* were not completed, in August 2013 the Executive Committee, acting on behalf of the Judicial Conference, endorsed requiring all districts with a project on the *Five-Year Plan* to undergo an AMP process evaluation if they had not already done so. Congress also supported this decision. Evaluation and scoring of these projects will be completed this summer. A new *Five-Year Courthouse Project Plan for Fiscal Years 2016-2020* will be considered by the Judicial Conference at its September 2014 session.

In the meantime, the Judiciary's *Interim Five-Year Plan* lists Nashville, Tennessee as the Judiciary's top courthouse space priority in fiscal year 2015. This project has been on the *Plan* for 18 years and a total of \$26.1 million has already been spent to acquire the site and design the project. While we are pleased the President's budget includes funding for the Judiciary's Capital Security Program to address security deficiencies at several existing courthouses, it is imperative that the Judiciary also be able to move its courthouse construction program forward by funding the construction of new courthouses to meet critical space and operational deficiencies in judicial districts throughout the country. We respectfully ask that you include in the FY 2015 Financial Services and General Government Appropriations Bill \$181.5 million in funding in the Federal Buildings Fund for the Nashville courthouse construction project.

IMMIGRATION REFORM LEGISLATION

I will now turn to an issue that could have significant workload ramifications for the federal courts. There has been a great deal of discussion about the passage of immigration reform legislation during this session of Congress. Although the Judicial Conference does not take a position on the substantive policy issues of immigration reform, we are very concerned about having the resources necessary to handle the additional work that such legislation would place on the courts.

At present, it is not possible to estimate the overall cost to the Judiciary if immigration reform legislation were enacted, even if we knew which bills or provisions were included. That is because the impact of such legislation on the Judiciary would be driven largely by decisions and actions taken by Executive Branch agencies, and the funding provided by Congress to those agencies for immigration enforcement. We can say with certainty that immigration reform would have a significant resource impact on an already overburdened federal court system. Several reform proposals would create new federal crimes or significantly increase the potential penalties for immigration offenses, and other potential changes could affect civil dockets. Without sufficient resources for the Judiciary, these changes could substantially add to costs and delays within the system. New workload demands potentially require new judgeships and related staff; interpreters; probation and pretrial service officers; federal defenders and panel attorneys providing defense representation under the Criminal Justice Act; juror fees; and any additional requirements for court security, space and facilities.

Of particular concern is S. 744, the "Border Security, Economic Opportunity, and Immigration Modernization Act" passed by the Senate last year. If enacted, the legislation would have significant resource implications for the federal courts. Specifically, S. 744 would increase workload for the federal courts (1) by dramatically increasing personnel, resources, and funding for the Department of Homeland Security and the Department of Justice, which would likely increase prosecutions in federal court, (2) through the judicial review provisions, and (3) by adding several new federal crimes and increasing the penalties for the most frequently charged immigration offenses. Although the legislation would provide an initial federal outlay of \$6.5 billion to the Executive Branch to implement provisions of the legislation, the bill *does not address the related funding needs of the Judiciary at all*. Without increased resources, the federal courts could not sustain the increased workload this legislation would require.

I recognize it is unclear how, or even if, Congress will proceed on immigration reform legislation this session but I think it is important to bring our concerns to the attention of the Committee and ask that any immigration reform legislation provide sufficient resources to the federal courts to meet new workload demands.

ROLE OF THE ADMINISTRATIVE OFFICE

Created by Congress in 1939 to assist the federal courts in fulfilling their mission to provide equal justice under law, the AO is a unique entity in government. Neither the Executive Branch nor the Legislative Branch has any comparable organization that provides the broad range of services and functions that the AO performs for the Judicial Branch.

Unlike most Executive Branch entities in Washington, the AO does not operate as a headquarters for the courts. The federal court system is decentralized, although the AO does have management oversight responsibilities over the court security program, the probation and pretrial services program, the defender services program, and the national information technology programs.

AO support to the Judicial Conference and its 25 committees is a cornerstone of this structure. The Conference committees, which we staff, are not only dealing with important issues of judicial administration and policy, but they are constantly exploring ways to cut costs and work more efficiently in their program areas. The AO develops and supports the application of new technology for the courts; provides financial management services, and personnel and payroll support; and conducts audits and reviews to ensure the continued quality and integrity of federal court operations. The AO has evolved over the years to meet the changing needs of the Judicial Branch, but service to the courts has been and remains our basic mission. A good example follows:

Preparing for the Government Shutdown – The federal courts remained open during the 16-day government shutdown because the AO was able to provide some funding relief to the courts through the judicious use of our fee and carryforward balances. Court operations, however, were far from normal as spending had to be held to a minimum in order to maximize the limited funding available to us. The AO was heavily involved in providing the courts and the federal defender organizations with guidance on short term ways to limit operations and minimize obligations during this period.

The AO also provided extensive guidance to courts and federal defender organizations about operations in the event fees were exhausted. In two nationwide conference calls, just days before fee balances would have been fully exhausted, more than 850 judges and court staff asked AO staff experts questions about court operations during a partial government shutdown. Court participants from Guam to New York participated in the 90-minute calls. Participants e-mailed questions to a specific mailbox created for the calls enabling AO staff to address the identified topics during the conference call. Guidance was given on many subjects including procurement, furloughs, personnel performing non-essential work, jury management, essential travel for court proceedings, judge and employee pay and benefits, prioritizing caseloads, and court security.

On October 16, 2013, just as the Judiciary began to implement its shutdown plans, a short-term Continuing Resolution was enacted through January 15, 2014, which included funding for the Judiciary to pay two weeks of unpaid Criminal Justice Act panel attorney vouchers, restore court security officer hours, restore cuts in drug testing and drug and mental health treatment, and address juror costs. Again, we are grateful for the support provided to the Judiciary.

AO RESTRUCTURING

As noted above, the mission of the AO is to provide service to the federal Judiciary. In an era of flat or declining resources, however, it became apparent that the AO had to make changes in order to fulfill that mission. In January 2011, an AO cost-containment task force was formed with the goal of developing short- and long-term recommendations to ensure that the AO could meet its core responsibilities with substantially reduced resources. The task force reviewed AO organizational, policy, and process alternatives and developed specific actions to contain costs in fiscal years 2012, 2013, and beyond. Among its 24 recommendations was to

“assess the AO’s structure across all directorates” and determine “how to organize to best support the Third Branch.” Ten days before my arrival at the AO, a significant restructuring and consolidation of the AO was announced, to be implemented by the end of the fiscal year (September 30, 2013). Our new organizational structure is now in place and functioning smoothly.

The goals of the AO restructuring were to reduce operating costs and duplication of effort, simplify the agency’s administrative structure, create opportunities for greater efficiencies, and enhance services to the courts, the Judicial Conference, and the public. The new structure is leaner and more integrated, fostering decentralized decision-making. Prior to the restructuring, the AO had 13 Assistant Directors. Those positions have been abolished and the AO has now been reorganized into three departments, each led by an Associate Director:

- The Department of Program Services provides direct support to all judges in performing their daily administrative tasks and managing chambers, as well as support services to all clerk’s office staff and programs, regardless of court type. The offices within the Department of Program Services are organized along functional lines to eliminate “stove-piping”. All IT development for court and defender programs is now consolidated. A new office focused on data retention, analysis, and reporting was created. Separate offices support the federal defenders, and the probation and pretrial services communities.
- The Department of Administrative Services provides national administrative support, coordinating all administrative needs for judges and policy support for the Judicial Conference Committees on Judicial Resources, the Budget, Space and Facilities, and Judicial Security. The Office of Human Resources is within this Department and provides payroll, benefits, and other services to all judges as well as to the courts and the federal defender personnel management system. The Facilities and Security Office provides space and facilities guidance, resource management, and court security. In addition, this office also serves as the national liaison to the U.S. Marshals Service and GSA. The newly merged Budget, Accounting, and Procurement Office provides procurement and accounting support and travel management, and is responsible for the formulation and execution of the Judiciary’s annual budget. All IT system development supporting the AO and national administrative systems was combined into a new Administrative Systems Office.
- The Department of Technology Services is where we have centralized information technology operations and services for the courts nationwide. This Department provides strategic planning, coordination, and assessment of the Judiciary’s technology needs as well as policy and support for the Judicial Conference Committee on Information Technology. Issues include IT Security – an increasingly important function as major organizations in both the public and private sector have been subject to cyber-attacks -- Cloud Technology and Hosting, Infrastructure Management, and the Systems Deployment and Support Office, which includes testing and training of Judiciary IT

systems and a national help desk. The deployment of national IT initiatives is also supported by this Department.

The Executive Management Group has been reduced from 15 members to 6, and several offices have been dissolved with work absorbed by other offices. A new Ethics Staff has been established in the Office of General Counsel, consolidating staff support to three Judicial Conference Committees – Financial Disclosure, Codes of Conduct, and Judicial Conduct and Disability. And a new executive-level Office of Fair Employment Practices has been created to consolidate fair personnel practices in the courts and the AO.

The fiscal outlook requires a more efficient, flexible AO with a simpler organizational structure capable of responding quickly and efficiently to the needs of the courts. We believe this restructuring will enable us to “maintain excellence in an era of fiscal austerity.”

AO COST CONTAINMENT

In addition to the roll-out of the AO reorganization, we the past year continuing to work toward full implementation of the recommendations of the AO cost-containment task force. While many of the initiatives have been in effect since 2012, including reductions in travel, printing, publications, subscriptions, and mobile device costs, a few are worth noting here:

Information Technology – The AO increased its use of videoconferencing as an alternative to travel by AO and court staff. During the government shutdown, many meetings scheduled to occur in-person were conducted by videoconference to avoid cancelling or delaying the activity. As I previously mentioned, the AO teleconference with nearly 900 court participants brought together to discuss issues related to a possible shutdown, is an example of timely and efficient use of technology.

National Videoconferencing and Telephone Services – The AO deployed a new national videoconferencing service that has reduced the Judiciary’s videoconferencing costs by eliminating the need for redundant local connections and equipment. This service has the potential to reduce court travel costs significantly. The AO has also implemented an internet protocol (IP) telephone service that transferred the Judiciary’s voice services to the national network. As of March 2014, nearly 30,000 of an anticipated 38,000 devices had been deployed. Telecommunications costs incurred by local courts using the system have already started to decrease as their telephone requirements are met by this new system. As part of the telecommunications upgrade, a national videoconferencing capability has been tested and is now in production. Based upon financial data from 147 court units using the system, the Judiciary has realized appreciable cost savings through the elimination of redundant local court telecommunications circuits, video infrastructure, and operations and maintenance fees.

Procurement Savings – Significant cost savings were also achieved through the AO negotiating and competitively awarding blanket purchase agreements for use by the courts in acquiring services and equipment. Awards were made for desktop and laptop computers and peripheral

equipment; software; local area network services and support; and probation and pretrial services urinalysis testing.

ADMINISTRATIVE OFFICE FY 2015 BUDGET REQUEST

The fiscal year 2015 appropriations request for the Administrative Office of the U.S. Courts is \$84,399,000. This net increase of \$3,199,000, or 3.9 percent, over the fiscal year 2014 enacted level represents a current services budget – there are no additional staff or program increases.

The AO account is financed through direct appropriations, reimbursements from other Judiciary accounts, and the use of non-appropriated funds, including judiciary fee collections and fee carryforward. In fiscal year 2015, the Judiciary expects to have fewer non-appropriated funds available than it did in fiscal year 2014. As a result, the majority of the requested increase – \$2,779,000 – is necessary to replace the loss of these non-appropriated funds in order to maintain the same level of service as provided in fiscal year 2014. The other base adjustments are for standard inflationary increases. We will, of course, keep you apprised of updated carryover estimates throughout the year. If carryover and fee collections are higher than currently estimated, our need for direct appropriations will be reduced commensurately.

Over the last few years of constrained budgets, the AO has downsized its workforce by 10 percent through attrition, buyouts and early outs, and by imposing hiring caps and leaving positions vacant. More recently, the AO's reorganization provides us with the flexibility to better align our existing staff, and the hiring of new employees, so that we may carry out the AO's statutory responsibilities and serve the courts. For fiscal year 2015, we seek only the funding necessary to support the 2014 end-of-year staffing level at the AO.

CONCLUSION

Chairman Crenshaw, Representative Serrano, and members of the Committee, the work performed by the AO is critical to the efficient and effective operation of the U.S. courts. The AO provides administrative support to the 25 Judicial Conference Committees, 2,363 judicial officers, and approximately 28,400 court employees. In addition to our service to the courts, the AO works closely with the Congress, in particular the Appropriations Committee and its staff, to provide accurate and responsive information about the Federal Judiciary.

I fully recognize that fiscal year 2015 will be another difficult year for you and your colleagues as you struggle to meet the funding needs of the agencies and programs under your purview, particularly with fiscal year 2015 discretionary spending essentially capped at the fiscal year 2014 level. I urge you, however, to consider the significant role the AO plays in supporting the courts and the mission of the Judiciary, and to bear in mind the role of the Judicial Branch in our constitutional structure. Our budget request is one that does not seek new resources for additional staff or programs. I hope you will support it.

Thank you again for the opportunity to be here today. I would be pleased to answer your questions.



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

HONORABLE JOHN D. BATES
Secretary

March 13, 2014

Honorable Ander Crenshaw
Chairman
Committee on Appropriations
Subcommittee on Financial Services and
General Government
United States House of Representatives
Washington, DC 20510

Dear Mr. Chairman:

I write to transmit the Judiciary's *Interim Five-Year Courthouse Project Plan for Fiscal Years 2015-2019 (Interim Five-Year Plan)* for your consideration in the coming fiscal year. The *Interim Five-Year Plan* sets forth the Judiciary's priorities for courthouse construction funding through fiscal year (FY) 2018. This *Interim Five-Year Plan* incorporates three technical changes to the *Five-Year Plan* that was approved by the Judicial Conference of the United States on September 11, 2012. The Mobile, Alabama, project was removed from the plan because complete funding was provided for that project in the Consolidated Appropriations Act of 2014; the fiscal years for which funding is requested for the projects on the plan were advanced by one year; and the General Services Administration's cost estimates were updated.

In forwarding this plan, the Judiciary is mindful of the intense budget pressures under which the federal government is operating. The majority of the proposed projects, however, have previous congressional funding and authorization, and the General Services Administration (GSA), which has responsibility for construction of the courthouses, is at various stages of site acquisition or design development. The current plan is largely geared toward completion of these projects, all of which are consistent with the courtroom sharing policies adopted by the Judiciary, as well as our continued policy of not building out space for requested new judgeships.

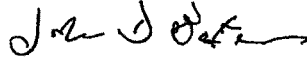
In 2008, when the Judicial Conference adopted the Asset Management Planning (AMP) process for long-range capital planning, it grandfathered the existing projects on the *Five-Year Plan* that had already received some amount of funding from Congress. However, as funding for these projects has been held to a minimum for several years, the Executive Committee in August 2013, acting on behalf of the Judicial Conference, decided to require all districts with a project on the *Five-Year Plan*, that had not already done so, to undergo an AMP process evaluation. Evaluation and scoring of these projects will be completed by this summer. A *Five-Year Courthouse Project Plan for Fiscal Years 2016-2020* that incorporates these new AMP evaluations will be considered by the Judicial Conference at its September 2014 session.

Honorable Ander Crenshaw

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We greatly appreciate the attention Congress has given over the years to the Judiciary's need for sufficient, safe, and functional facilities in which to administer justice. If we may be of further assistance to you in this or any other matter, please do not hesitate to contact us through our Office of Legislative Affairs at (202) 502-1700.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Bates", with a stylized flourish at the end.

John D. Bates
Secretary

Enclosure

Identical letter sent to: Honorable Harold Rogers
Honorable Nita Lowey
Honorable Jose Serrano

Interim Five-Year Courthouse Project Plan for FYs 2015-2019*

March 2014
(estimated dollars in millions)

FY 2015			Cost	Score
1	Nashville, TN	Add'l. S/ Add'l D / C	\$181.5	67.3
2	Savannah, GA	Add'l. C	\$95.5	61.3
3	Norfolk, VA	Add'l D	\$12.0	57.4
			\$289.0	

FY 2016			Cost	Score
1	San Antonio, TX	Add'l. S / C	\$134.6	61.3
2	Charlotte, NC	C	\$177.0	58.5
3	Greenville, SC	Add'l.S/Add'l D/C	\$92.2	58.1
4	Harrisburg, PA	C	\$160.8	56.8
			\$564.6	

FY 2017			Cost	Score
1	Norfolk, VA	C	\$104.7	57.4
2	Anniston, AL	Add'l. D / C	\$41.0	57.1
3	Toledo, OH	Add'l. D / C	\$109.3	54.4
			\$255.0	

FY 2018			Cost	Score
1	Chattanooga, TN	S&D	\$25.0	37.3
2	Des Moines, IA	S&D	\$48.0	35.3
			\$73.0	

FY 2019			Cost	Score
			\$0.0	

S = Site; D = Design; C = Construction (includes M&I); Add'l. = Additional
All cost estimates provided by GSA Central Office.

The following estimates were updated in March 2014: Nashville, San Antonio, Greenville, and Harrisburg.

The following estimates are as of March 2013: Savannah, Norfolk, Charlotte, Anniston, Toledo, Chattanooga, and Des Moines.

*This Interim Plan reflects technical changes to the Five-Year Courthouse Project Plan for FYs 2014-2018 as approved by the Judicial Conference of the United States in September 2012 by removing the Mobile project because funding was provided for that project in the Consolidated Appropriations Act of 2014. The Plan also updates the fiscal year for which funding is requested for the projects on the plan.


HONORABLE JOHN D. BATES

Director

Administrative Office of the United States Courts

Judge John D. Bates was appointed Director of the Administrative Office of the United States Courts by Chief Justice John G. Roberts, Jr., and began his duties as Director on July 1, 2013. Judge Bates has been a federal judge since 2001, when he was appointed to the U.S. District Court for the District of Columbia. He will retain his commission as an active district judge while serving as Director.

Judge Bates graduated from Wesleyan University, receiving a B.A. (history) in 1968. From 1968 to 1971, he served in the U.S. Army, including a tour in Vietnam. He received his J.D. degree in 1976 from the University of Maryland School of Law, where he was awarded *Order of the Coif* and was an editor of the *Maryland Law Review*.

Judge Bates clerked for Judge Roszel C. Thomsen of the United States District Court for the District of Maryland from 1976 to 1977. He was admitted to the District of Columbia Bar and Maryland Bar in 1976. He was in private practice as an associate at Steptoe & Johnson in Washington, DC, from 1978 to 1980. Judge Bates then served as an Assistant U.S. Attorney for the District of Columbia from 1980 to 1998, and was Chief of the Civil Division of the U.S. Attorney's Office from 1987 to 1998. He served on detail as Deputy Independent Counsel (Whitewater) from 1995 to 1997. In 1998, he joined the law firm of Miller & Chevalier, where he was Chair of the Government Contracts/Litigation Department and a member of the Executive Committee until his appointment to the United States District Court.

From 2005 to 2011, Judge Bates served on the Judicial Conference Committee on Court Administration and Case Management. In February 2006, he was appointed by Chief Justice Roberts to serve as a judge of the Foreign Intelligence Surveillance Court, and he served as Presiding Judge of that court from May 2009 until February 2013. He has also served on the Advisory Committee for Procedures of the District of Columbia Circuit and on the Civil Justice Reform Committee for the District Court, and as Treasurer of the D.C. Bar, Chairman of the Publications Committee of the D.C. Bar, and Chairman of the Litigation Section of the Federal Bar Association. He was a member of the Board of Directors of the Washington Lawyers Committee for Civil Rights and Urban Affairs.

Mr. CRENSHAW. Well, thank you all very much. We are going to observe our 5-minute rule for the members, and so you all, as you give your answers, kind of bear that in mind.

I will recognize folks based on seniority that were here when the meeting started, and the latecomers will be recognized in the order in which they came.

Who came in first, Mr. Graves, you or Mr. Yoder?

Mr. GRAVES. I sat first. I know that.

JUDICIARY SPACE REDUCTION

Mr. CRENSHAW. Okay. Sitting down is important.

Let me start by thanking you all for your testimony. I know last year, we talked some about the fact that rental space is a big part of your budget, and I think this year it is around a billion dollars. I wanted to find out if you are continuing to work on that. I think last year, there was \$50 million for cost-containment initiatives. This year, I think you have asked for \$10 million to continue that. So tell us how all that is working out. How did the—money from last year, how is that being spent? What do you plan to do for next year? And big picture, how are we doing on reducing our footprint?

Judge GIBBONS. I am going to start with the big picture. As you know, we have been doing a lot for a long time in the space area. Presently our focus is on two national policies that were approved by the Judicial Conference in September of 2013. The first is our 3 percent national space reduction target, which we hope to achieve by the end of fiscal year 2018. The second is a policy we are calling “no net new,” and the principles behind that are that any space increase must be offset by an equivalent space reduction in the same year. Excepted from these two policy initiatives are space that is congressionally approved. Circuit councils will be submitting their plans for achieving the space reduction goal by May.

We are employing a number of different strategies to get to these goals. First would be our Integrated Workplace Initiative, IWI. And the principle there is that the growth of technology and the possibility of telework have made a different and cheaper workplace appropriate in some settings. IWIs require money to modify the workplace, but over time, they save money.

To give you just one example, Chicago is moving its probation office from leased space back to the courthouse for a 50 percent reduction in occupied space, but it costs \$3.4 million to install phone lines, cables, move walls, partitions, create cubicles. That cost is going to be \$3.4 million. The \$10 million figure you refer to is a part of all the math we go through to get to the point that we have to have some money to save money in the long run. This construction in Chicago will cost \$3.4 million, but overall, the savings to us will be substantial.

[CLERK’S NOTE.—Subsequent to the hearing, Judge Gibbons provided the following additional information:]

The project costs associated with moving the Chicago probation office from leased space to the courthouse are \$3.4 million as I cited; however, vacating the commercial leased space for the probation office will result in annual rent savings of at least \$1.4 million. Thus, the \$3.4 million in project costs will be recouped in about two and a half years.

Another strategy we are employing is releasing nonresident courthouse space. Six of those facilities were released in 2012, four more in 2013. We have already garnered a savings of about \$1 million a year, and we expect to proceed along those lines in other areas.

We are looking at reducing library space and we have provided some incentives to the courts for giving up space.

Coupled with these new initiatives, we are still continuing to emphasize our longstanding efforts to validate the rent we are charged and to hold GSA accountable for the bills it sends us to make sure we are getting billed for what we in fact occupy. And we are continuing programs like the circuit rent budget that enable us to prioritize the money we receive appropriately.

Mr. CRENSHAW. That is great. Thank you very much.

Mr. Serrano.

IMPACT OF FY 2014 FUNDING ON FEDERAL DEFENDERS

Mr. SERRANO. Thank you, Mr. Chairman.

And, again, welcome to both of you. As you know, I have been greatly concerned about the impact of sequestration in our Federal Defender Program, which performs an important constitutional role in upholding the Sixth Amendment's right to counsel for indigent defendants. My understanding is that our Federal defenders lost more than 400 employees last year because of sequestration. Because of these concerns, this subcommittee provided an overall funding level of \$1.044 billion for defender services in 2014.

With this additional funding, what steps is the judiciary taking to rebuild Federal defenders offices to pre-sequestration levels?

Judge GIBBONS. The funds that were provided for 2014 will enable the defender offices to replace about 350 of the 400 employees lost, so most of the losses can be replaced. We have been able with the panel attorneys to restore the rate that they had prior to the September 1, 2013, temporary reduction, and so that, too, has been done, plus the panel attorneys received a small cost-of-living increase.

The defenders have had trouble—are having trouble backfilling all of these vacancies. It is a very uncertain time still budgetarily, but we believe that carrying forward the funds over 2 years, that they will be able to make substantial progress in restoring the defender offices to their prior strength. We are committed to that, and we are committed to working with this committee to do that.

Mr. SERRANO. Okay. And so you say you work jointly with the defenders to make sure that you can get them up to the level that they should be at?

Judge GIBBONS. Well, they have to take the steps to hire, obviously.

Mr. SERRANO. Right.

Judge GIBBONS. But, you know, that is not as easy a task as it seems, and that is why the damage to the program was really very unfortunate—

Mr. SERRANO. Right.

Judge GIBBONS [continuing]. Because you have to identify able attorneys. You have to bring them up to speed. It is not just—it is not the same thing as hiring just somebody who is more readily

available. But they will get it done, and they are working on it. And we are encouraging them to move to hire, even though the future is not entirely clear.

Mr. SERRANO. Right. Any comments?

Judge BATES. No. I think Judge Gibbons has handled it.

SECURITY CONCERNS AT ATTORNEY COURTHOUSE

Mr. SERRANO. Okay. That is fine.

Let me ask you. As you know, I have always had a special interest in issues affecting Puerto Rico. Maybe it has something to do with the fact that I was born there. Lately I have heard some troubling reports about the Federal courthouse complex in San Juan in the Hato Rey section. My understanding is that there have been some serious security breaches at the complex. Are you all aware of this issue, and are there plans in place to better secure the complex? Also, I know this is more of an issue for GSA, but has the judiciary discussed construction of a new courthouse in San Juan?

Judge BATES. We are aware of the security issues, and indeed they are being worked on. At this time, there is staff from the Administrative Office, including the head of our space office, which deals with facilities and security, down in San Juan, assessing the situation, and working with GSA and the local court officials to address those security concerns. There also is a project ongoing, a Capital Security Program project going on there in San Juan that is helping to address the security deficiencies that have been identified in Hato Rey. And so we are working very diligently on that. There is a security study that is being done and will be completed in a few months, and I would expect that improvements can be made.

With respect to a new courthouse, I think that that is something that GSA has agreed to begin a feasibility study of, and we will work with them and, again, with all of the court officials down in San Juan to assess that situation and see if the answer is a new courthouse.

Mr. SERRANO. So you have both security concerns being discussed now? You are working with folks down there to see if you could come up with a better idea of securing the existing facility, and GSA is leading a study to see if there is a need for a new courthouse?

Judge BATES. They have agreed to begin the feasibility study of the courthouse, looking at all the Federal real estate holdings, and determine whether a new building or an annex or some new construction is necessary.

Mr. SERRANO. Right.

Judge BATES. On the security side, we know what the security issues are, and those are being addressed both through the Capital Security Program project that is underway there, it is one of our lead projects, through funding from fiscal year 2012 and through the assessment that is ongoing at this time.

Mr. SERRANO. Thank you.

Thank you both.

Mr. CRENSHAW. Thank you.

Mr. Graves.

IMMIGRATION REFORM LEGISLATION

Mr. GRAVES. Thank you, Mr. Chairman.

Thank you all for being here today. And, Judge, I just—Judge Bates, wanted to see if you could elaborate a little bit on a part of your, and I guess it was submitted for the record, your statement as it related to the immigration proposal that was passed in the Senate. And in your comments, you indicate that it would take a tremendous amount of additional resources if the law was in fact enacted, and while the law as it was proposed provided some resources, it wasn't adequate. Would it be possible to elaborate on what you would foresee if that law or other forms of immigration reform were adopted, what kind of resources, and really, why—you know, I guess what would be the reasoning for additional resources, to help us navigate that as we think and move ahead?

Judge BATES. I would be happy to. The impact of immigration reform legislation on the courts could be substantial, but it does depend on the specifics of any bill that eventually passes. The judiciary has no position on the substantive policy issues that are for the political branches to resolve, although we have provided some specific comments both to the Senate Judiciary Committee prior to that bill coming out of the Senate, and to Chairman Goodlatte and the House Judiciary Committee.

The cost to the judiciary really results from increased cases coming into the court system. That workload could be great, depending on how many new cases. There could be new crimes. Some of the proposals have included new crimes being established and also enhanced penalties, and those could result in additional needs, particularly in the border courts, and those needs would include possibly additional judges, court staff, probation and pretrial services officers, and the Federal public defenders, who are representing these individuals, as well as the panel attorneys, who are paid for through our appropriations.

The Senate bill does include billions of dollars for the executive branch, it is through a trust fund that has been set up, that will result in expanded enforcement of existing provisions and new provisions in that bill, but there are virtually no resources for the judiciary, which would be involved in that enforcement effort through cases brought into court, except for a small piece that goes to a specific area in Arizona, the Tucson sector.

Even now, the Judicial Conference has included a request for additional judges in the border courts, but this immigration legislation could make that need much more acute. And we simply feel that it is important to point out that the judiciary has resource needs in all these areas that could result from whatever the specifics of the bill might be.

Mr. GRAVES. When you reference new cases, is it because the law creates new crimes, or is it because there is additional resources being provided that provide for more enforcement, which therefore leads to more cases? I guess, ultimately, the question being, given the current law as we have it today, the laws that are governing us now, do you have adequate resources to—or are those—are the resources that are there necessary—the necessary resources there to enforce the current laws, or do you see that it is inadequate at

this point and that these proposals that are out there, whether in the House or the Senate, are creating additional laws or enforcement mechanisms that create the need for additional resources?

Judge BATES. The answer to the current situation is the judiciary absolutely does its best to handle the work that comes into the courts. The border courts are strapped. They are working very, very hard, all sectors, the judges, the staff, the probation offices, the Federal defenders, but they are meeting the needs.

Do they need more resources? Yes, but not as acutely as would be true if new legislation both creates additional enforcement by the Department of Justice and perhaps even adds new crimes and enhanced penalties that would lead to more cases.

Mr. GRAVES. Okay. Thank you.

Thank you, Mr. Chair.

Mr. CRENSHAW. Mr. Quigley.

HIRING IN FEDERAL DEFENDER OFFICES

Mr. QUIGLEY. Thank you, Mr. Chairman.

Good afternoon, Judges.

I, too, have, since I got here last year, tried to do what I can for the Defender Program. As I mentioned, I was a criminal defense attorney for 10 years, 26 in California; highest conviction rate in the county. That was funnier last year, I guess.

I understand a couple things. First, on the rehiring, is it the first practice to rehire those that we lost before in the cuts?

Judge GIBBONS. I don't know. I think that would be dependent on each particular Federal defender's or community defender's decisionmaking processes, and that is not something that would be centrally determined in any way.

Mr. QUIGLEY. It would sort of make sense, though, since they have done the job before and had the experience.

Judge GIBBONS. Well, yes, but you know, uncertainty makes it difficult to rehire those—if those people have moved on to other opportunities.

Mr. QUIGLEY. You mean uncertainty that they are not sure we are going to do this again or not?

Judge GIBBONS. Well, they might be uncertain but there are no guarantees. They could be reasonably assured probably of remaining employed for a period of 2 years, but they may have learned a hard lesson, and they may not want to be here and sit there in 2016.

RESOURCE ALLOCATION TO FEDERAL DEFENDER OFFICES

Mr. QUIGLEY. I understand. I also hear that the Executive and Budget Committees of the Judicial Conference have talked about a one-size-fits-all program for defenders and that they are going to be asked to create—all carry the same number of cases. I don't know if you have heard this or not.

Judge GIBBONS. I think—

Mr. QUIGLEY. Regardless of the type of case that they handle or—

Judge GIBBONS. Well, no. Your information is, first, I will say, inaccurate. There are a couple of things that you might be referring to that are ongoing. Taken into account, into determine—

Mr. QUIGLEY. Not the first time a judge has told me I am wrong, just so you know. Used to happen on a daily basis.

Judge GIBBONS. Well——

Mr. QUIGLEY. And I always said, Okay.

Judge GIBBONS. Well, you are——

Judge BATES. We are just hoping not to get the same today from you.

Judge GIBBONS. You know, there are probably—I can understand it. There are a lot of fears out there, but that particular one is not one for a defender to be concerned about. Allocation——

Mr. QUIGLEY. What would the——

Judge GIBBONS. I don't know, but I can tell you—I think in the course of this answer, I will tell you what you might have heard about.

Mr. QUIGLEY. Okay.

Judge GIBBONS. Currently, allocations to individual defender offices in individual districts are based on case weights. That is not a one-size-fits-all method, because the whole idea is that different cases are different. For example, under a case weight system, as you might expect, a murder is an 8.6 under their numerical system; a bank robbery is 2.6; possession of marijuana is .34; illegal entry, .15.

There is a concern—and this, I imagine, is what you heard. There is a concern about apparent disparities in workload among defender offices. And we have defender offices where the individual lawyers carry workloads far below a national average and offices where they carry a caseload that is far above. And there might be reasons for those, but they are not reasons that are accounted for by case weights.

One of the efforts that is ongoing, not in an effort to have every defender office look exactly the same, but in an effort to more accurately assess staffing needs is the development of work measurement formulas. The case weights, which do differentiate, will be a part of the work measurement formula. This is a staffing assessment methodology that we have used successfully in clerks offices and probation and pretrial services offices for years. It is not perfect. When you get it, it has to be taken with a grain of salt, but it is still the best, most objective method we know for trying to assess staffing needs.

But in the defender world, they have not had a work measurement formula before, so there is concern and some degree of angst probably about that, but I think when you look at how they are developed more closely, that particular fear that you articulated is not one that ought to exist.

A further part of that, further thing that goes to mitigate the fear is that there is precedent within the formulas for the use of subsets of formulas. So you might have different offices treated differently but treated the same as other offices that are similarly situated. So there are a lot of nuances here that sometimes get lost in the shuffle.

Mr. QUIGLEY. And I will yield back. I just want you to know, Judge, obviously we don't pull this out of thin air. It is percolating from something.

Judge GIBBONS. I understand that. And I am sure you heard it, but believe me, we have heard it, too.

Mr. QUIGLEY. Very good. Thank you.

Mr. CRENSHAW. Thank you.

Mr. Yoder.

TEMPORARY DISTRICT JUDGESHIPS

Mr. YODER. Thank you, Mr. Chairman.

Thank you both for coming to testify today. It is certainly one of our more important tasks as we determine how we make sure that resources are available for the judicial branch. And I think many of us look at our work here as not just another Federal agency, certainly, but an entire branch of government, and in all cases, the work you do is brought to you, not work you seek or cases that you have gone out and found. In fact, you can't do that. And so you have got the burdens that are put before you. Regardless of whether you have the resources, they are there. And so we want to make sure that we have the resources properly allocated, we want to make sure that we are, you know, resolving disputes in a timely fashion and making sure the laws are enforced properly in this country.

A couple questions related to just how we have appropriated dollars. I want to thank Judge Bates for at least I think in your written testimony discussing the temporary judgeships issue. And I think it is an important one, it needs to be acknowledged before the committee that we have a number of temporary judgeships; one of them happens to be in Kansas, and then certainly in a number of other states. We have extended those temporary judgeships every year. My hope, of course, my strong wish would be this committee would continue that practice to ensure that those judgeships are available.

I wonder what our long-term solution is for this issue. Every year, it comes up. Every year, we work on it to fix it, and this committee does their work. Certainly, we would, I think, all appreciate if the authorizing committee, the Judiciary Committee, you know, maybe permanently made these positions available. But what are your thoughts on how we move forward and what does the future look like? And thanks for your support on those.

Judge BATES. Let me start by thanking you and the other members of the committee for including language in the fiscal year 2014 Consolidated Appropriations Act that extended the temporary judgeships in nine courts, including Kansas.

You have identified the long-term solution, and that is for the authorizers to convert some of these temporary judgeships to permanent judgeships. And indeed, that is the hope of the Judicial Conference. That is what the Judicial Conference has requested with respect to eight of the nine temporary judgeships which were extended this last fiscal year. And that is what the long-term solution has to be.

Those courts need that assistance from those judgeships, and it would be really a crucial injury if those judgeships lapsed and were not continued, but barring that authorization, I think that we will be back here year after year with a list of temporary judgeships that are very, very important to continue, asking the appropriators

to extend those temporary judgeships, as you have done and as, again, we really thank you very, very seriously for.

WORKLOAD OF JUDGES

Mr. YODER. Well, it is an issue we are going to have to continue to work on, but I think this committee hopefully will continue to support those judgeships. And unfortunately, it creates uncertainty in our courts when we don't know whether those positions will continue every year. And so far this committee's done their work and will hopefully continue to do so, but certainly I think we all want to find a long-term solution.

In terms of your judicial caseloads and the burdens that some of our judges are working through, what is optimal in terms of caseloads? How many do we have? Is it higher than optimal, I am guessing, in many cases? What is the typical caseload for a judge? And how many more judges would we need, what would they cost? And, I guess, what are the ramifications that we see in the court system by not having enough judges to cover the caseloads that are available?

Judge GIBBONS. Well, I will start, and I have a feeling Judge Bates may well want to add something on this, too.

That varies greatly by district and part of the country how high a caseload individual judges carry. And we use a weighted case system in order to determine judgeship needs, too, similar to the one I discussed with Representative Quigley for the defenders. And we have worked in the past on ways of alleviating this imbalance. We have an intra-circuit assignment process. There is a lot that is done within circuits to try to relieve this imbalance. We do have a judgeship bill pending, which Judge Bates may want to address. I am drawing—we will probably supplement this answer, because what I am about to say draws on some very old knowledge on my part, so it is rough; it is from memory.

Back in the 1990s, I chaired the committee that is responsible for assessing judgeship needs, and the formula that is used for judgeships starts at about—you know, if you have a caseload per district of over—around 450 per judge, that is the point at which you start looking at whether another judge is needed, taking into account other factors, like the availability of senior judge help and some other things.

For appellate judges, my memory, subject to being corrected later, is that it is around 500 cases per panel. And there is, you know, there is a biennial survey. We have an elaborate process for determining judgeship needs.

[CLERK'S NOTE.—Subsequent to the hearing, Judge Gibbons and Judge Bates provided the following additional information:]

The Judicial Conference uses a threshold of 430 weighted filings per authorized judgeship in a judicial district as a starting point for considering an additional judgeship. For circuit judgeships, the threshold is 500 filings as I indicated in my response. The 430 and 500 thresholds for new district and circuit judgeships, respectively, applies to what filings per judgeship in a district or circuit would be after a new judgeship is created, unless certain circumstances apply. For this reason, judicial districts and circuits that are candidates for new judgeships currently have filings well above the 430 and 500 thresholds.

As background, the Judicial Conference considers judgeship needs on a biennial basis and transmits its judgeship recommendations to Congress for consideration. On April 5, 2013, the Judicial Conference's new judgeship recommendations to Con-

gress included adding 5 permanent judgeships and 1 temporary judgeship to the courts of appeals, and 65 permanent judgeships and 20 temporary judgeships to the district courts, as well as converting 8 temporary district court judgeships to permanent status. In addition, the Judicial Conference recommended the creation of 29 bankruptcy judgeships, 2 temporary bankruptcy judgeships, and the conversion of 20 temporary bankruptcy judgeships to permanent status.

Judgeship recommendations are the product of formal studies and survey processes, based on caseload standards and workload factors among other considerations, tailored to meet the needs of the United States Article III and bankruptcy courts.

The Judicial Conference will next transmit new judgeship recommendations to Congress in Spring 2015.

Judge BATES. I will only supplement that very slightly. There is a very elaborate and careful process for determining judgeship needs, and each year, the Judicial Conference for each Congress makes an assessment and a recommendation of any new judgeships.

One way to describe the figures that Judge Gibbons just gave, which are, I think, approximately correct, is that the Judicial Conference standard, to pull this back into the temporary judgeships arena, the standard for considering whether to recommend a temporary judgeship be converted to a permanent judgeship is weighted filings per authorized judgeship that would rise above 430 if that temporary position was lost. And that is on the district court level.

In terms of costs, I don't know the figures. I have heard some throw around figures, when you combine staff as well as the judge and the build-out for chambers, of something around \$1 million for a judgeship, but I don't know that that is right. We would have to supplement to give you a more accurate answer to that.

[CLERK'S NOTE.—Subsequent to the hearing, Judge Bates provided the following additional information:]

The Judiciary uses the unit cost table below for estimating the cost of a new circuit or district judgeship. Establishing a new circuit judgeship costs an estimated \$968,525 in annual recurring costs and \$148,195 in start-up costs, for a first year estimated expenditure of \$1,116,720. Establishing a new district judgeship costs an estimated \$1,050,143 in annual recurring costs and \$148,232 in start-up costs, for a first year expenditure of \$1,198,375.

Estimated Cost of Establishing a New Circuit or District Judgeship

	Circuit Judgeship	District Judgeship
Judges¹		
Salary	\$211,200	\$199,100
Benefits	\$20,619	\$19,940
Subtotal:	\$231,819	\$219,040
Other Recurring Costs²:		
Support Staff	\$406,887	\$426,293
Operating Expenses	\$87,399	\$61,837
Space	\$150,237	\$250,790
Security	\$92,183	\$92,183
Subtotal:	\$736,706	\$831,103
Total Recurring Costs:	\$968,525	\$1,050,143
One-time Start-up Costs³:	\$148,195	\$148,232
Total First Year Costs:	\$1,116,720	\$1,198,375

¹The salaries and benefits of circuit and district court judges are mandatory appropriations (direct spending) for budget scorekeeping purposes.

² "Other Recurring Costs" are discretionary appropriations for budget scorekeeping purposes.

³ "One-time Start-up Costs" include lawbooks, furniture, space alterations (if needed), and one-time security costs. These costs are discretionary appropriations for budget scorekeeping purposes.

COURT SECURITY PRIORITIES

Mr. CRENSHAW. Thank you very much. We have got time, maybe, for a couple more questions if other members have them. Let me ask you a couple questions about security, both court security and then courthouse security. I think this year, you asked for an additional \$33 million for court security. How do you go about making sure that is the most cost-effective, most efficient way to use money? Tell me a little bit about how you decide what you need in terms of court security.

Judge GIBBONS. The security account is one in which it is pretty hard to control the costs, but we are committed to our obligation to do so. And we want to make sure, though, that we don't create security vulnerabilities when we cut costs. As you know, we are in a situation within the security account where part of the funds that are appropriated to the judiciary go to the United States Marshals Service that is responsible for providing our courthouse security, and then we also pay the Federal Protective Service to provide some additional security. This creates a little bit of a, I wouldn't call it a problem, but just a situation for us on both sides of that.

We have worked, though, very successfully with the Marshals Service to maintain oversight of our funds. Recent initiatives have been new CSO contracts that save some dollars through competitive bidding. We went to fewer part-time CSO's. While still retaining the flexibility that goes with the part-timers, we were able to eliminate some costs that recur through numbers, like uniforms, medical evaluations and such. We have eliminated 68 court security officer positions in overstaffed courts.

We have some ongoing concerns about the FPS situation that is a little similar to our relationship with GSA, and we have not been as successful in validating—getting our bills from the FPS validated.

We took a 30 percent cut in security and equipment during sequestration, and the CSO's had to work fewer hours. Those have been restored. But going forward, we have a real need for both new equipment that is just necessary to keep up to date on a recurring basis, and we have some deferred needs. It is time for cyclical replacements. That is just an overall problem.

The \$33 million you referred to is the full appropriations increase requested in the account, but obligations would actually go up only \$18 million, and that is based on an assumption that there will be no carry-forward into 2015. We, of course, hope that that assumption proves not to be correct. And we will be updating you, as we always do, in May and September, and we hope to have some carry-forward that will reduce the amount that is being sought from you all.

JUDICIARY CAPITAL SECURITY PROGRAM

Mr. CRENSHAW. I think you did that last year. On the other side, regarding court security, I know a couple years ago we gave the GSA \$20 million so rather than build a brand new courthouse, the Judiciary can renovate it and bring it up to security standards. How has that worked out? Is that money all gone?

Judge GIBBONS. That has been done largely through the capital security project that Judge Bates referred to previously. And he can elaborate on that further, but that is exactly what that was intended for and has been used for.

Judge BATES. And very successfully. And we are grateful to the committee for its support of the program, and hope that it will be reinstated for 2015 since it was not included in 2014. Those Capital Security Program projects have been very successful. It is a way to spend a little less to address security needs only where there really aren't space needs that go along with the security needs that would warrant new courthouse construction. There are many projects, including the one in San Juan that I referred to earlier, that are underway with fiscal year 2012 and 2013 funds. We didn't get 2014 funds. Hopefully we will get 2015 funds, and that is included in the President's budget submission, \$20 million.

We have several projects ready to go that have been approved already by the circuit judicial councils in Columbus, Georgia; Monroe, Louisiana; and Texarkana, Texas and Arkansas. And they are all in the \$5 million to \$7 million range, and they address security concerns in the space, some of which are the Marshals Service's space concerns for prisoner security and the like. And it is important that it be recognized that it includes both judiciary and Marshals Service's concerns and security needs, because without the capital security project, we can't really address the Marshals Service's end of it, because with our appropriated money, we couldn't do anything with their space.

Mr. CRENSHAW. Thank you.

Mr. Serrano.

PROBATION AND PRETRIAL SERVICES USE OF TECHNOLOGY

Mr. SERRANO. Thank you. I just told the world that GSA was looking at the possibility of building a courthouse in Puerto Rico.

Judge BATES. They will be happy.

Mr. SERRANO. Offender supervision technologies. We always kind of leave that to the side because we seem to know about ankle bracelets and all that. But can you discuss how probation officers use technology to improve the supervision of offenders?

Judge GIBBONS. There has really been a transformation of the way supervision is carried out as a result of all the technological advancements. You referred to electronic monitoring. We now use new technologies for drug detection and abuse of prescription drugs detection. Probation officers are able to use data mining computer services to better keep up with offenders. We have a PACTS system, which is an internal system—I won't try to tell you what that stands for—in which officers are able to record their own notes and case events.

We have an electronic data warehouse for probation and pretrial services officers to record workload activity, release data. We have another program called LENS that enables us to give electronic notice to local law enforcement if an offender is moving into an area. Offenders can report electronically, either online at home or at a kiosk. And, of course, all the probation and pretrial services officers have all these devices that they can use in the field or in the office,

you know, the same ones that all the rest of us use, the phones, the iPads.

One really interesting thing about this is how much the extent to which this revolution in technology of supervision goes hand in hand with our space reduction efforts, because one of the reasons we are able to reduce space for probation and pretrial services offices is because of what technology has done for supervision.

ECONOMY'S IMPACT ON RE-ENTRY INITIATIVES

Mr. SERRANO. Mr. Chairman, I have one last question. I am not a lawyer, but I am told that a lawyer never asks a question that he or she doesn't know the answer to, so I will take a chance that I am wrong on this one.

How has the economy affected the reentry initiatives to help people come back and find jobs?

Judge GIBBONS. Well, as I am sure you can imagine, it has had an impact. It is always not the easiest thing to place offenders in gainful employment, and, of course, the economy makes that harder.

Another problem has been the lack of availability during sequestration of Second Chance Act funding, and that was, as you may recall, the funding that enabled probation officers to undertake so many of these initiatives that helped reintegrate offenders into the community, things like transitional housing, job training, educational training, cognitive behavior therapy, all those kinds of things.

For 2014, courts can use their decentralized funds if they have them available for Second Chance Act funding, but for 2015, we have requested \$2.9 million in dedicated Second Chance Act funding, and that will help very much with the reintegration of offenders in good times and bad.

Mr. SERRANO. Thank you.

As you know, Mr. Chairman, I am not a lawyer, but I did play a judge on Law and Order once.

Mr. CRENSHAW. Yeah, we know that.

Mr. SERRANO. I told the DA to behave, and he didn't, so I threw out the case momentarily and never got it back.

Mr. CRENSHAW. Boy. Good thing this guy doesn't have a law degree.

Mr. Yoder.

Mr. SERRANO. He is just saying that because he didn't get the part.

AVERAGE CASELOAD PER JUDGE

Mr. YODER. I was right. Okay, a little bit of follow up on our last conversation regarding the amount of caseloads per judge. I think you said the optimal was 450 and that is when it means it is time to request a new judge or there is a need for a new judge at least. I don't know that I ever got an answer what is the typical, what is the average caseload?

Judge GIBBONS. I don't have that figure. I mean, we would have to do some—we would have to answer that supplementally; 450 for a district judge is the figure that I recall as being the figure at which you start looking for need. But to look at the typical caseload

across the country or average, we would have to give you that figure.

You know, it is so—it differs so much, and the raw figures that we would give you would not be the weighted figures that are much more meaningful in terms of evaluating what the workload of a court is. Also the average figures wouldn't give you the caseload mix between criminal and civil.

[CLERK'S NOTE.—Subsequent to the hearing, Judge Gibbons and Judge Bates provided the following additional information:]

The table below provides workload statistics for district court judges for fiscal years 2009 through fiscal year 2013. As reflected in the table, in fiscal year 2013 district judges handled, on average, a total of 579 unweighted case filings, which included 420 civil cases, 120 criminal cases, and 38 supervised release/probation revocation hearings. This workload equates to 545 weighted filings per judgeship after filings are adjusted to account for the complexity of different types of cases.

U.S. District Courts¹

			12-Month Periods Ending					
			Sep 30 2008	Sep 30 2009	Sep 30 2010	Sep 30 2011	Sep 30 2012	Sep 30 2013
Overall Caseload Statistics	Filings		371,155	384,902	394,345	402,885	386,664	391,652
	Terminations		337,761	369,801	419,178	414,739	382,837	362,228
	Pending		386,347	397,943	377,952	366,740	365,760	391,788
	Number of Judgeships		678	678	678	677	677	677
Actions per Judgeship	Filings	Total	547	568	582	595	571	579
		Civil	394	408	417	427	411	420
		Criminal Felony	122	128	130	134	125	120
		Supervised Release Hearings	31	32	34	33	35	38
	Pending Cases		570	587	557	542	540	579
	Weighted Filings		472	480	490	509	520	545

¹Table excerpted from the September 2013 Federal Court Management Statistics available on www.uscourts.gov.

Mr. YODER. How many judge also are over a 450 caseload?

Judge GIBBONS. I don't know. We would have to provide that in a supplemental answer.

[CLERK'S NOTE.—Subsequent to the hearing, Judge Gibbons and Judge Bates provided the following additional information:]

The Judicial Conference uses a threshold of 430 weighted filings per authorized judgeship in a judicial district as a starting point for considering an additional judgeship. This threshold applies to what filings per judgeship in a district would be after a new judgeship is created, unless certain circumstances apply. Of the 94 federal judicial districts, there are currently 38 districts that would have average weighted filings above 430 with an additional judgeship, thus making each of those districts candidates for at least one new judgeship based on the weighted filings threshold. Some of the 38 districts would be candidates for more than one additional judgeship.

Mr. YODER. Okay.

Judge, do you have anything on that.

Judge BATES. No, I don't know that specifically. The only figures I have in my head or in front of me relate to those temporary judgeships, and those courts have pretty high average weighted caseloads, even including that temporary judge. It goes all the way up to over 1,200 in the Eastern District of Texas and over 600 in Arizona, over 600 in Florida Southern. So some courts have very, very high—

Mr. YODER. What is the net effect on the public when our case-loads get to that amount per judge?

Judge BATES. I think the primary effect on the public is delay.

Mr. YODER. Judicial delay.

Judge BATES. Delay in dispensation of justice.

Mr. YODER. Where do you see the highest demand for new cases right now? Where is the increase coming from or where are the greatest demands on the court right now, what types of cases?

Judge GIBBONS. You know, this is not a period in which the courts' caseloads are rocketing up in any particular area. In fact, even the border courts which, of course, have seen dramatic case-load increases since the early, very early 2000s, have seen a very modest diminishment lately, although we do not expect any dramatic decline. And, of course, immigration reform could affect that greatly, probably on the upswing.

But we do expect civil cases to increase somewhat. We expect—criminal cases have declined a bit, and we think we may see that. Bankruptcy filings have been down somewhat, but we expect them to level off in 2015. Appeals Court, I think those cases are pretty flat right now.

So you never know exactly what is going to happen next in the courts, and things that happen in the country generally very much affect that. This is kind of a stable period.

IMPACT OF LEGISLATION ON THE FEDERAL COURTS

Mr. YODER. Well, the economy was brought up earlier in terms of reentry programs. Those are things outside of your control that might affect the amount of folks that are coming back through the system, which will increase demand on the court system.

You mentioned immigration, which is something that I don't know that Congress has really had much of a debate about regarding the impact on the court system, so I am actually really glad

that you raised that as an issue because that will have to be taken into account.

I think, in previous years, you mentioned when we pass significant reforms to enact, like redoing the Bankruptcy Code or if we were to do tax reform or things like that, just kick up dust in terms of they are new issues that have never been resolved just because they are new laws the courts will have to weigh in on as there are portions of the laws that, for better or worse, this congressional process hasn't tied up every loose end, and the courts have come in and weigh in.

Are there things beyond immigration, or the economy was mentioned earlier, are there other bills that are pending? The bill that relates to mandatory minimum sentences that is in the Senate that Attorney General Holder is supporting, the idea we would eliminate mandatory minimum sentences, particularly for drug crimes, does that affect the court system in terms of caseloads?

Judge BATES. It does, but not in terms of caseload, per se. The place where those kinds of sentencing reforms affect the judiciary is more in the release of people. But there are also some effects from caseload. If some of the sentencing reforms were put into place, it might mean some additional cases because some of the reforms relate to changes in the sentences under the sentencing guidelines for certain drug offenses.

Mr. YODER. So they would have to come back through.

Judge BATES. So they would come back through the system, and that could be quite an additional workload for the courts. Early release programs have an effect, but it is on the courts more through the probation and pretrial services end of our resources than through new cases occurring.

Mr. YODER. I appreciate it.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you. Mr. Quigley.

And I would say if you are going to start your next round of questions with a joke, you might preface by the remark, "Here is another one you might not like."

PRODUCTIVITY OF JUDGES

Mr. QUIGLEY. The story of my life. I am beginning to feel like Rodney Dangerfield. There is some humor in all of this because it is better to laugh than cry about some of it, I guess.

But following up on Mr. Yoder's questions about judicial productivity, and I preface it by saying some of my best friends are judges, in watching them for 10 years, obviously some of them are more productive than others, much more productive than others. The difference at the Federal level, it is not exactly like you can fire them if they are really unproductive, and I recognize that most are very conscientious and work hard. But how exactly do the courts handle this in trying to get judges to be more productive and move their caseload along faster and take more cases?

Judge GIBBONS. You know, it sort of depends on the situation. As you can imagine, this raises sensitive questions. I have been a chief judge of a district court and if you are the chief judge of a court, whether a district court or an appellate court, you try as best you can to deal with the case of the unproductive colleague or the less

productive colleague and you try also to deal with what the underlying cause for that might be if it is something other than simply just differing work styles.

On the one hand, you do have to appreciate that judges have different ways of doing things, and they are entitled to make reasonable decisions about how to do things. On the other hand, if the productivity of a court as a whole is threatened, you have got some difficult decisions to make. You might have to figure out whether we can get the judge help or whether there is something that you can do to encourage the judge to change his or her ways. And you hopefully do it in such a way that the judge won't simply resist it. If there is an underlying cause, then, obviously, that is another very delicate situation, and you have to try to address that.

The courts really have tried as best they can to address all of those situations and to do it with the best judgment as possible to exercise in a given situation.

Judge BATES. Let me add to that. Judge Gibbons has addressed it from the primary place that it needs to be addressed, which is locally, where the chief judge and the other members of a court can really grapple with any particular instance that may occur.

But there are some national efforts to address it. We have committees of the Judicial Conference that do look at the productivity of courts, how far behind courts are in terms of the average time a civil case may take to get through the system, the time to get to trial, things of that sort. Our Committee on Case Management and other administrative matters spends a lot of time looking at that and then reaching out to those courts and trying to give those courts additional help, guidance, expertise, to try to make them more efficient.

Congress has also done things that help. The Civil Justice Reform Act is basically a reporting system for district courts where judges wind up reporting cases where they have pending motions—again this is on the civil side, not the criminal side, which sort of has a timeline of its own that is statutory—but the civil cases, the Civil Justice Reform Act requires reporting of motions that are more than 6 months old, cases that are more than 3 years old, and those are mechanisms to prod judges to be more timely where there is a need to do so.

Judge GIBBONS. And I might say that appellate courts have internal reporting requirements so that the embarrassment factor figures there, too.

Mr. QUIGLEY. I appreciate that. Thanks for your service. I yield back.

CHAIRMAN CRENSHAW'S CLOSING REMARKS

Mr. CRENSHAW. Well, thank you both, Judge Gibbons, Judge Bates, for your testimony this afternoon. We look forward to working with you so that you can meet the constitutional needs that need to be met, and we appreciate the fact that you have been willing to work with us in these difficult economic times to try to do things more efficiently and more effectively, and that doesn't go unnoticed. So, again, thank you for being here today.

The meeting stands adjourned.

Judge GIBBONS. We appreciate very much the opportunity to work with you all and the staff. Thank you.

Judge BATES. Thank you all.

Financial Services and General Government Subcommittee
Hearing on the Judiciary FY 2015 Budget
for The Honorable Julia S. Gibbons, Chair, Committee on the
Budget of the Judicial Conference of the United States

Questions for the Record Submitted by Congressman Mike Quigley

Federal Defenders

1. **The Judiciary has been given the important task of protecting the independent federal defense function in our justice system. Sequester has had a devastating impact on the federal defense function in particular.**

Question: In what specific ways are you planning to build back the federal defense function while protecting its independence?

Answer:

The Judiciary depends on Congress to provide the funding we need to do our work and therefore our ability to rebuild the Defender Services program is directly related to the appropriations we receive from Congress. Congress certainly responded to our request for help in the aftermath of sequestration by providing the Judiciary with a 5.1 percent overall increase in discretionary appropriations in the FY 2014 omnibus appropriations bill, which included a 5.9 percent increase for the Defender Services program. We are very appreciative that Congress recognized the devastating impact of sequestration on the Judiciary and provided funding in FY 2014 sufficient for the federal courts to begin recovering from sequestration.

The Budget Committee, Defender Services Committee, and Executive Committee of the Judicial Conference are committed to rebuilding the Defender Services program. Specifically, FY 2014 funding is being utilized to enable federal defender organizations to backfill most of the 400 staff (11 percent) lost as a result of sequestration. We realize backfilling this many positions in a single year is not realistic so the Executive Committee approved a strategy to use the no-year appropriations authority in the Defender Services account to allow the backfilling of positions through the end of FY 2015. The House and Senate Appropriations Committees also approved this multi-year hiring strategy as presented in the Judiciary's FY 2014 financial plan. In addition, FY 2014 funding was utilized to restore, effective March 1, 2014, the \$15 per hour temporary emergency rate cut to Criminal Justice Act panel attorney rates that took effect September 1, 2013, due to the uncertainty regarding FY 2014 funding.

The two-year hiring strategy is only available for federal defender organizations and is made possible because of Congressional funding. Clerks of court and probation and pretrial services offices – which have lost 3,200 positions (15 percent) since July 2011 due to flat budgets followed by sequestration in FY 2013 – have not received this same hiring authority for FY 2014 and FY 2015.

The actions described in this response to rebuild the Defender Services program in no way encroach upon the independence of the Judiciary's appointed-counsel program. Federal defenders and CJA panel attorneys will continue to operate with the same degree of independence they always have on case-related matters.

2. You stated in your testimony that the federal defenders were hit harder than other accounts in the judiciary.

Question: Isn't this the time to be infusing the Defender Account with more resources because it will take several years to hire back qualified staff?

Answer:

To clarify, the statement in my prepared testimony that "[p]erhaps the most significant impact was in our Defender Services program . . ." should not be interpreted to mean that the sequestration cut to Defender Services was *disproportionately* larger than the sequestration cut to other Judiciary accounts, or to other government programs in general. On the contrary, the Defender Services program was subject to the same 5.0 percent across-the-board sequestration cut that applied to discretionary appropriations government-wide.

The statement that the most significant impact of sequestration was perhaps in the Defender Services program instead refers to the *effects* of sequestration on Defender Services, specifically the loss of 400 staff (11 percent) in federal defender organizations, two weeks of panel attorney vouchers that had to be deferred from FY 2013 into FY 2014, and a \$15 temporary emergency rate cut to panel attorney hourly rates that was implemented September 1, 2013, due to concern that the account would be flat funded at a sequestration funding level for FY 2014.

The impact of sequestration was devastating across the Judiciary. However, the impact was perhaps more significant for federal defender organizations because of decisions to hire staff in the months leading up to sequestration. With 90 percent of federal defender organizations' budgets required for staff salaries and space rent, the only option available for managing the 5 percent sequestration cut was to furlough and layoff staff. On the other hand, clerks of court and probation and pretrial services offices had reduced staffing levels prior to sequestration, primarily through normal attrition, which better positioned those offices to deal with sequestration cuts. That said, clerks of court and probation and pretrial services offices still lost 1,200 staff (6 percent) in fiscal year 2013 alone.

We completely agree with the statement that this is the time "... to be infusing the Defender Account with more resources because it will take several years to hire back qualified staff." We are doing exactly that. As stated in the previous response, the Executive Committee of the Judicial Conference and the House and Senate Appropriations Committees have approved a two-year hiring strategy to allow federal defender organizations to backfill, through the end of

FY 2015, most of the 400 positions lost during sequestration. Additional hiring in FY 2016 and beyond in federal defender organizations, if needed, will be dependent on workload, results of the work measurement study, and on appropriations received from Congress.

3. We understand that you have an accelerated Work Measurement study underway for the 81 federal defender organizations.

Question: How does this encourage federal defenders to hire staff in the next three years?

Answer:

The potential impact of the staffing formula development process on either national federal defender organization staffing requirements or on individual offices is not yet known. The Judiciary expects the Judicial Conference to consider staffing formulas for federal defender organizations at its September 2015 session, thus making the approved formulas available for use in the FY 2016 financial plan. The Judiciary will consider an implementation strategy covering multiple years, as appropriate.

For FY 2014 and FY 2015, federal defender organizations have the ability to backfill most of the 400 positions lost during sequestration. Additional hiring in FY 2016 and beyond in federal defender organizations, if needed, will be dependent on workload, results of the work measurement study, and on appropriations received from Congress. We live in uncertain budget times. Federal defenders, like all Judiciary managers, must make prudent hiring decisions that take into account the federal budget outlook as well as office workload needs.

The Budget Committee believes that, given available resources, defenders should hire now if workload justifies it. This is the best course to follow in order to rebuild the program promptly. Federal defenders should not let fears of future contingencies that cannot now be known govern hiring decisions.

4. Judge Gibbons, you have focused on the many cost containment initiatives underway across the Judiciary.

Question: Do you have specific plans for federal defense?

Answer:

We take great pride in being responsible stewards of the taxpayers' money and we endeavor to cut costs where possible, spend each dollar wisely, and make smart investments to achieve long-term savings. Our cost-containment efforts are essential to position the Judiciary for the fiscal realities of today and the future, and enable us to say with confidence that we only request from Congress the minimum amount of funding we need to do our work.

The Judiciary is 10 years into an intensive cost-containment effort that has touched all corners of federal court operations and we continue to look for ways to reduce growth in the Judiciary's budget. We are expanding the use of shared administrative services among the courts of appeals, district courts, bankruptcy courts, probation and pretrial services offices, and federal defender organizations to reduce administrative staffing and overhead costs. We have recently launched a major initiative to reduce the Judiciary's space footprint by a targeted 3 percent by the end of FY 2018.

For the Defender Services program there are several cost containment initiatives underway:

- Electronic CJA Voucher System. An electronic CJA voucher processing system is being developed to automate and streamline the current paper review/approval process, improve the accuracy of panel payments, give judges better analytical tools to use when evaluating CJA panel attorney vouchers, and improve the data available about CJA cost drivers.
- Case Weights. A federal defender organization (FDO) case weighting system has been implemented to help assess individual FDO workload and resource needs. These case weights have been used as part of a new methodology for formulating the national FDO appropriations request, as well as for individual FDOs for budget execution purposes.
- Staffing Formula for FDOs. The Judiciary is developing a new staffing formula for FDOs, using the work measurement process to provide a more equitable distribution of staffing, based on the work performed at each FDO. The Judicial Conference is expected to consider staffing formula options in September 2015, thus making the approved formulas available for use in FY 2016. The Judiciary will consider an implementation strategy covering multiple years, as appropriate.
- Case Budgeting. This initiative focuses on the 3 percent of CJA panel attorney representations that account for 30 percent of the costs. The Judiciary is promoting the use of case budgeting for any "mega-case" (a representation in which total expenditures are expected to exceed \$30,000) and for all federal capital prosecutions and capital post-conviction proceedings. A 2010 Federal Judicial Center study found that the savings from case budgeting positions more than offset their costs. The Judiciary will be expanding the number of case budgeting attorney positions from three to eight FTE in fiscal year 2014. These eight FTE will provide case budgeting services in nine judicial circuits.
- Discovery Costs. In a cooperative venture between the Administrative Office and the Department of Justice, broad national protocols were promulgated last year that are designed for more cost-effective and efficient management of electronically stored information (ESI) in discovery. The Judiciary is optimistic that cost avoidance will

result from widespread implementation of the new protocols, particularly in the increasingly common cases involving extremely large amounts of ESI.

5. Question: In other words, do you intend to cut or shrink this account?

Answer:

The Budget Committee of the Judicial Conference has no intention of cutting or shrinking the Defender Services account. The goal of our cost-containment efforts is to position the Judiciary for the fiscal realities of today and the future, and to request from Congress the minimum amount of funding we need to do our work. This cost-containment strategy seeks to control future growth in Judiciary accounts and to enable us to live within anticipated future appropriations. This is true for every Judiciary account, including Defender Services. Requesting sufficient appropriations from Congress for Judiciary programs and simultaneously stressing cost containment internally are not incompatible objectives.

6. There are reports in the media that groups such as the NACDL are concerned about the independence of the federal defense function, especially when difficult decisions must be made for allocating scarce resources within the Judiciary.

Question: How does the Judiciary plan to respond to such concerns?

Answer:

The Defender Services program benefits from being funded within the Judicial Branch. The current structure ensures that the funding needs for Defender Services are endorsed by the Judicial Conference of the United States after a rigorous internal justification process. We believe this process instills confidence within the Appropriations Committees in Congress that the funding needs for Defender Services, and for other Judiciary accounts that fall under the jurisdiction of the Judicial Conference, have received appropriate scrutiny and that the Judiciary is requesting only the minimum amount needed to meet workload demands.

Sequestration presented unprecedented challenges for the Judiciary, and there were no easy answers on how best to implement the 5 percent across-the-board sequestration cuts to Judiciary accounts. Sequestration cuts Judiciary-wide totaled nearly \$350 million. The Executive Committee of the Judicial Conference faced difficult choices. In implementing sequestration cuts for Defender Services in FY 2013, the Executive Committee carefully considered the views of the Committee on Defender Services as well as the impact of various proposals on federal defender organizations and CJA panel attorneys.

Federal defender organizations and CJA panel attorneys operate with complete independence on case related matters. That independence is unaffected by resource levels, but certainly resource scarcity can impair the quality of representation that federal defender organizations and CJA panel attorneys are able to provide.

7. Judge Gibbons stated in her testimony that defenders are reluctant to replace the staff they were forced to lay off during the sequester because the future is so uncertain.

Question: What is the Judiciary's plan to provide the defenders with stability so that they can have confidence to fill vacancies?

Answer:

As stated in an earlier response, the Executive Committee of the Judicial Conference and the House and Senate Appropriations Committees have approved a two-year hiring strategy to allow federal defender organizations to backfill, through the end of FY 2015, most of the 400 positions lost during sequestration.

We operate in an uncertain federal budget environment which makes hiring decisions difficult government-wide, including within the Judiciary. This is true not just for federal defender organizations but for clerks of court and probation and pretrial services offices as well. Managers understandably are cautious and do not want to have to repeat the difficult downsizing and furlough decisions they had to make during FY 2013 as a result of sequestration.

It is impossible to provide assurances to federal defender organizations for hiring beyond FY 2015. Additional hiring in FY 2016 and beyond in federal defender organizations, if needed, will be dependent on workload, results of the work measurement study, and on appropriations received from Congress. Federal defenders, like all other Judiciary managers, must make prudent hiring decisions that take into account the federal budget outlook as well as office workload needs.

8. During her testimony, Judge Gibbons mentioned that the wide variations in weighted caseloads among defender offices is an issue that the staffing formula study is meant to address. But she also mentioned that there is a wide disparity in weighted caseloads for judges.

Question: Why is the wide disparity among judges acceptable based on local practices yet not acceptable for federal defender offices for the same reasons?

Answer:

Disparity among weighted caseloads among judges for the most part is not based on local practices. Rather, caseload among judges is primarily based on the number of judgeships that Congress has authorized for a particular court, number of vacancies, and filing trends. Caseload disparity among judges thus does not represent a Judiciary choice. But the Judiciary does use various methods for adjusting disparities, including a rigorous inter-circuit assignment program, intra-circuit assignments, and use of visiting judges. There has not been a major judgeship bill enacted into law since 1990 so the number of authorized federal district judges across the country has essentially been a fixed number for the last 25 years despite significant workload growth over that period. Despite Congressional inaction on creating new judgeships, every two years the Judicial Conference transmits to Congress recommendations for new judgeships in

order to bring down the average weighted filings per authorized judgeship in certain judicial districts. In the absence of new district judgeships, average weighted filings over time will likely continue to rise in some districts and create even more of a disparity.

The causes for disparities in weighted caseload among judges and among federal defenders are significantly different, thus making comparisons between the two problematic. The Judiciary does not control the number of judges on board at any given time. While federal defenders' workload, like judicial caseload, is affected by many factors outside the control of federal defender organizations (prosecutorial practices and policies of the Department of Justice and local U.S. Attorney offices, district-specific requirements for attorneys, proximity of detention facilities, etc.), federal defender organizations do have some latitude to increase or decrease staff to accommodate workload needs.

9. The FY 2013 budget cuts to defender offices badly damaged the program. The program lost over 400 positions last year. The damage was so severe that we believe it will take at least two years to bring us back up to full staffing. Defenders are rightfully fearful that if they hire they will be told in FY 2015 or FY2016 that they will again have to lay off employees.

Question: How is the Judiciary planning to help the defenders build up their staffing in light of such a large loss of positions?

Answer:

The Executive Committee of the Judicial Conference and the House and Senate Appropriations Committees have approved a two-year hiring strategy to allow federal defender organizations to backfill, through the end of FY 2015, most of the 400 positions lost during sequestration.

We operate in an uncertain federal budget environment that makes hiring decisions difficult government-wide, including within the Judiciary. This is true not just for federal defender organizations but for clerks of court and probation and pretrial services offices as well. Managers understandably are cautious and do not want to have to repeat the difficult downsizing and furlough decisions they had to make during FY 2013 as a result of sequestration.

It is impossible to provide assurances to federal defender organizations for hiring beyond FY 2015. Additional hiring in FY 2016 and beyond in federal defender organizations, if needed, will be dependent on workload, results of the work measurement study, and on appropriations received from Congress. Federal defenders, like all other Judiciary managers, must make prudent hiring decisions that take into account the federal budget outlook as well as office workload needs.

- 10. The Executive and Budget Committees of the Judicial Conference have requested a new staffing formula be created for federal defenders to "flatten" the different caseloads for different offices and to require every attorney to carry the same caseload no matter what district they are in or what kind of cases they defend. If our lawyers are forced to take on more cases, they will be unable to effectively represent their clients and the costs will come out in different ways (longer prison sentences, more requests for new counsel resulting in more time and money spent per case, many more ineffective assistance of counsel law suits, loss of quality applicants, loss of morale, loss of staff, loss of innovation, etc.).**

Question: Why is the Judiciary looking to change the way defenders are funded to create a "one size fits all" formula?

Answer:

The purpose of the work measurement study and the resulting formula is not to flatten caseloads, impair representation, or create a "one size fits all" formula. The Judiciary has no interest in achieving any of those things. As the Judiciary knows from the utilization of work measurement formulas in clerks of court offices, probation and pretrial services offices, and staff attorneys' offices, work measurement formulas are the best tool for accurately assessing staffing needs. While they are the best tool, they are not a precise tool and instead serve as an important guideline or starting point for determining staffing needs.

As background, the Judiciary has used the work measurement process for several decades to build staffing formulas for most of its non-chambers functions in appellate, district, and bankruptcy courts, and for probation and pretrial services offices. Those staffing formulas provide a detailed, quantitative way to understand and assess staffing requirements, help contain costs, justify staffing requirements in budget submissions, and serve as mechanisms to ensure equitable distribution of resources among the Judiciary's varied offices and locations. Recent staffing formula efforts have set a precedent for accommodating variances in local offices. For example, the staffing formula for bankruptcy clerks' offices uses six different size-based formulas rather than a one-size-fits-all solution.

Budgets for federal defender organizations are currently developed based on case weighting. The Judiciary believes the work measurement process and resultant staffing formulas will provide a more equitable distribution of staffing based on the work performed at each federal defender organization. The work measurement analysis for federal defender organizations is being led by the Judicial Conference Committee on Judicial Resources, which has jurisdiction over work measurement and staffing formulas within Judiciary accounts.

As mentioned above, we have no prediction as to the potential impact of the staffing formula development process on either national federal defender organization staffing requirements or on individual offices. The work measurement process is likely to produce a set of formulas addressing the requirements of similarly-situated groups of federal defender organizations. Although speculation at this early stage of the study is premature, a single formula seems unlikely due to the wide range in office sizes, and the broad array of demands on

federal defender organizations arising from differences in geography, population, types of cases, local rules, standing orders, number and locations of court divisions and detention facilities, and the prosecutorial initiatives of the respective U.S. Attorney's Office. The staffing study that is underway has been designed to collect data on district-specific factors that may impact the time an attorney must spend to resolve a case.

At a minimum, by incorporating case weights as a factor in the formula, the formula will account for differences among workload and cases. But if there are several formulas, their application will substantially increase individualized consideration of staffing needs of different offices and enhance representation. Under either scenario, none of the impacts the question assumes will materialize.

The Judiciary expects the Judicial Conference to consider staffing formulas for federal defender organizations at its September 2015 session, thus making the approved formulas available for use in the FY 2016 financial plan. The Judiciary will consider an implementation strategy covering multiple years, as appropriate.

11. Question: How will the new staffing formula study effect certainty and effective management in defender offices?

Answer:

As indicated in previous responses, it is simply not possible in this uncertain federal budget environment to provide certainty with regard to funding for Defender Services or any other Judiciary account. Like any other federal entity, the Judiciary is dependent upon Congress to provide the resources we need to do our work, but cannot predict precisely what future appropriations will be.

With regard to effective management, the Judiciary has used the work measurement process for several decades to build staffing formulas for most of its non-chambers functions in appellate, district, and bankruptcy courts, and for probation and pretrial services offices. Those staffing formulas provide a detailed, quantitative way to understand and assess staffing requirements, help contain costs, justify staffing requirements in budget submissions, and serve as mechanisms to ensure equitable distribution of resources among the Judiciary's varied offices and locations. Staffing formulas provide an initial starting point for establishing staffing needs on a national basis and for each individual court unit, but ultimately it is the funding provided by Congress through the annual appropriations process that is the chief determinant of what percentage of the staffing formula can be funded.

Staffing formulas provide court unit executives with a valuable management tool for assessing how projected workload changes in a circuit or district may impact staffing and associated salary costs. They should also serve as a valuable tool for managers in federal defender organizations.

Questions for the Record Submitted by Ranking Member José Serrano

Law Clerk Diversity

1. As you know, I am interested in the diversity of law clerks in the federal court system.

Question: Please discuss your efforts to improve the diversity of law clerks in the Federal Judiciary and provide, for the record, the diversity breakdown of law clerks by race and gender, for appellate and district judges for the last five years.

Answer:

The Judiciary has long recognized the importance of diversity in its workforce, particularly among law clerks in federal trial and appellate courts. Despite continuous efforts, our statistics suggest there is room for improvement.

In recent years, the Judiciary has taken a number of actions to attract and retain minority law school candidates:

- The Judicial Resources Committee (JRC) has expanded its Diversity Recruiting and Outreach Program. To date, the program has facilitated the involvement of local court participation at 73 career fairs and legal recruiting events, resulting in direct contact with 7,300 students in 32 districts in all circuits.
- By working with undergraduate institutions, law schools, bar associations, and other groups, the Diversity Recruiting and Outreach Program aims to increase student awareness of the breadth and scope of legal and non-legal positions in the Judiciary by providing visibility and access to advertised vacancies and opportunities for internships.
- As its core mission, the program engages courts through direct participation by networking with a diverse pool of students, graduates, and other professionals through partner organizations, highlighting the U.S. Courts and the Judiciary as an employer of choice.
- During its fourth year, the Diversity Recruiting and Outreach Program continued to build a strategic network of partnerships between various program offices, local courts, and working groups of judges and court staff, as well as external organizations such as Just the Beginning Foundation (JTBF), Congressional Caucuses (Black, Asian, and Hispanic), Council on Legal Education Opportunity, Minority Corporate Counsel Association, National Association for Legal Career Professionals, and the American Bar Association.
- Since the development and inception of the federal Judiciary's partnership with JTBF, over 150 minority law students have been placed in the chambers of federal judges.

In its third year, the partnership between the JRC and the JTBF yielded 61 law students for judicial internships with 52 federal judges, an increase from the previous year.

To complement the activities at career recruiting events, the Judicial Resources Committee continues to engage in the following:

- Contacting minority law student and other minority organizations and bar associations in hopes of creating and maintaining potential minority pipelines for judicial law clerk positions, and
- Sending correspondence to law school deans espousing the benefits of clerking and requesting deans share information with students.

Following are three tables: (1) Chambers Law Clerks (Appellate) by Race/Ethnicity: FY 2008 – 2012, (2) Chambers Law Clerks (District) by Race/Ethnicity: FY 2008 – 2012, and (3) Chambers Law Clerks by Gender: FY 2008 – 2012.

Chambers Law Clerks (Appellate) by Race/Ethnicity: 2008 - 2012

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2008	86.7%	3.3%	2.2%	7.4%	0.1%	0.2%
FY 2009	87.6%	2.5%	2.0%	7.6%	0.1%	0.2%
FY 2010	88.2%	2.7%	2.5%	6.4%	0.0%	0.2%
FY 2011	83.6%	3.8%	6.1%	6.3%	0.1%	0.1%
FY 2012	84.1%	3.9%	6.3%	6.4%	0.1%	0.1%

Chambers Law Clerks (District) by Race/Ethnicity: FY 2008 – 2012

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2008	86.1%	4.1%	3.3%	6.2%	0.1%	0.2%
FY 2009	86.1%	3.9%	4.4%	5.4%	0.1%	0.1%
FY 2010	87.5%	3.7%	4.5%	4.9%	0.3%	0.1%
FY 2011	86.0%	4.0%	4.8%	5.1%	0.2%	0.1%
FY 2012	87.0%	3.6%	5.7%	3.4%	0.2%	0.1%

Chambers Law Clerks by Gender: FY 2008 – 2012

	APPELLATE		DISTRICT	
	Male	Female	Male	Female
FY 2008	56.0%	44.0%	41.8%	58.2%
FY 2009	57.8%	42.2%	42.1%	57.9%
FY 2010	55.8%	44.2%	39.4%	60.6%
FY 2011	55.8%	44.2%	38.8%	61.2%
FY 2012	55.4%	44.6%	36.9%	63.1%

Diversity of Judiciary Staff**2. I am also interested in the diversity of Judiciary staff.**

Question: What efforts are you making to improve that diversity and please provide, for the record, the diversity breakdown of the clerks and support staff in the Federal Judiciary by race and gender, in total and separated by job title, seniority or pay scales as best may characterize the makeup of the Judiciary's workforce?

Answer:

In addition to expanding the diversity of the law clerk workforce in the Judiciary, the Judicial Resources Committee Diversity Recruiting and Outreach Program also includes the wider Judiciary workforce. Many undergraduate students are not aware that there are more than lawyer positions in the Judiciary. Court representatives at the recruiting events include probation and pretrial services staff, IT, finance and human resources professionals.

To date the program has facilitated the involvement of local court participation at 73 career fairs and other recruiting events, resulting in direct contact with 7,300 students in 32 districts in all circuits promoting both legal and non-legal positions in the courts.

The federal Judiciary bi-weekly workforce is grouped into six occupational categories: Executive, Legal Professional, General Professional, Legal Secretary, Technical, and Office Clerical.

The following two pages include job titles under each occupational category and a statistical table titled "Judiciary Staff by Gender, Race/Ethnicity, and Occupational Category for FY 2012."

Occupational Category	ASSOCIATED JOB TITLES
Executive	Circuit Executive, Deputy Circuit Executive Type II, Circuit Clerk of Court, Circuit Chief Deputy Type II, Circuit Librarian, Senior Staff Attorney, Chief Preargument/Conference Attorney, District Court Executive, Clerk of Court, Chief Deputy Clerk II, Bankruptcy Clerk of Court, Bankruptcy Chief Deputy Clerk Type II, Bankruptcy Administrator, Chief Probation Officer, Chief Probation/Pretrial Services Officer, Deputy Chief Probation Officer Type II, Chief Pretrial Services Officer, Deputy Chief Pretrial Services Officer Type II, Federal Public Defender.
Legal Professional	Law Clerk, Pro Se Law Clerk, Staff Attorney, Assistant Federal Public Defender, Research Writing Specialist.
General Professional	Administrative Manager/Officer, Administrative Analyst, Human Resource/Personnel Manager/Specialist, Financial Administrator, Budget Analyst/Specialist, System Manager/Specialist, Probation/Pretrial Services Officer, Paralegal, Sentencing Guidelines Specialist, Court Reporter, Deputy in Charge, Drug and Alcohol Treatment Specialist, Investigator.
Legal Secretary	Legal Secretary, Judicial Assistant, Secretary to the Federal Public Defender.
Technical	Human Resources Technician, Budget Technician, Financial Assistant, Case Administrator, Automation Support Specialist/Technician, Courtroom Deputy, Civil/Criminal Docket Clerk, Library Technician, Administrative Assistant, Data Quality Analyst, Electronic Court Recorder Operator, Executive Assistant, Case Manager.
Office Clerical	Receptionist, Generalist Clerk, Clerical Assistant, File Clerk, Records and Reproduction Clerk, Probation Clerk, Pretrial Services Clerk, Court Crier, Intake Clerk.

Judiciary Staff by Gender, Race/Ethnicity, and Occupational Category, FY 2012

Occupational Category	Total	Male	Female	RACE/ETHNICITY							No Rept
				Caucasian	African American	Hispanic	Asian	Native American	Pacific Islander		
Executive	748	440	308	634	59	30	11	6	3	5	
	100.0%	58.8%	41.2%	84.8%	7.9%	4.0%	1.5%	0.8%	0.4%	0.7%	
Legal Professional	6,902	2,938	3,964	5,722	296	337	360	12	5	170	
	100.0%	42.6%	57.4%	82.9%	4.3%	4.9%	5.2%	0.2%	0.1%	2.5%	
General Professional	11,516	5,199	6,317	7,721	1,421	1,784	422	64	26	78	
	100.0%	45.1%	54.9%	67.0%	12.3%	15.5%	3.7%	0.6%	0.2%	0.7%	
Legal Secretary	1,750	40	1,710	1,226	168	267	48	3	3	35	
	100.0%	2.3%	97.7%	70.1%	9.6%	15.3%	2.7%	0.2%	0.2%	2.0%	
Technical	7,182	1,429	5,753	4,437	1,351	950	322	25	18	79	
	100.0%	19.9%	80.1%	61.8%	18.8%	13.2%	4.5%	0.3%	0.3%	1.1%	
Office Clerical	2,171	261	1,910	1,119	408	536	73	12	5	18	
	100.0%	12.0%	88.0%	51.5%	18.8%	24.7%	3.4%	0.6%	0.2%	0.8%	
Total	30,269	10,307	19,962	20,859	3,703	3,904	1,236	122	60	385	
	100.0%	34.1%	65.9%	68.9%	12.2%	12.9%	4.1%	0.4%	0.2%	1.3%	

Questions for the Record Submitted by Congressman Mike Quigley

Public Disclosure and Access to Public Records

1. Like members of Congress, justices serving on the highest court in the land are required by law to annually disclose information about their personal investments. These are theoretically available to the public, but they are not made available online – except through third party sites.

Question: Has the Administrative Office of the Courts considered making these accessible online in an easily searchable, structured data format?

Answer:

Yes, the question of the best method for public release of financial disclosure reports for federal judges and justices is one that the Judiciary has carefully considered, as has the Congress. At this time, however, the Judicial Conference does not support a shift away from the current request-based system, whereby the data is collected from all federal judges and relevant judicial employees but not made public until a specific request is made.

Federal judges, history has shown, are often at much greater physical risk of harm than most other government employees. The particular role of a court in resolving individual criminal and civil matters has historically made them targets of violence. Federal judges do not seek out the cases over which they preside; cases are brought to a specific court by claimants and then assigned to a judge.

Financial disclosure reports may contain some information that could be exploited by persons seeking to harm judges or members of their families. Examples include location of: residence; spouse's workplace; child's school; or vacation home. Congress has repeatedly acknowledged that the public release of certain information contained in a financial disclosure report could pose a security risk to a judge, a judicial employee, or their family, by reauthorizing (most recently in 2012) special statutory authority for the Judicial Conference, under Section 105(b)(3) of the Ethics in Government Act, to redact sensitive information contained in the report. The request-based system allows the Judiciary to conduct a risk assessment at the time of the request. By waiting until a specific request is made, the Judiciary, in consultation with the U.S. Marshals Service, can target redactions to those necessary at the time of the request, as opposed to speculating about what may be dangerous at any future time, or engaging in a resource-intensive review of financial disclosure information every time new information is learned about a threat against a judge.

The Judiciary's redaction authority necessitates that there be a rigorous process in place to ensure that sensitive information is not released in response to a specific request. For this reason, the Judiciary's current request-based system is more prudent than having disclosure statements accessible online.

2. **Access to our federal courts and judicial branch should be available to all Americans, not only those with the ability to wait in line and attend a proceeding in person. I understand fourteen federal courts are participating in a video pilot program which has been well received.**

Question: What else is the Judicial Conference doing to improve and increase access to video and live audio transmission of oral arguments in our federal courts?

Answer:

The Judiciary has been a leader across the government in providing public access to a large amount of its data, proceedings, and records. The Judicial Conference is working on several initiatives to improve public access to federal court proceedings.

Since 1996, the Judicial Conference has allowed each court of appeals to decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments. In addition, each of the 13 courts of appeals makes audio recordings of oral arguments available to the public, and 11 courts of appeals do so free of charge on their websites. In addition, as noted in the question, the Judiciary's "cameras-in-the-courtroom" pilot, slated to continue through July 2015, is evaluating the effect of cameras in district courtrooms, video recordings of proceedings, and the publication of those videos. Fourteen district courts are participating and, as of February 2014, approximately 104 civil proceedings have been posted on the publicly-accessible website www.uscourts.gov. The recordings involve a variety of causes of action, including personal injury, libel and slander, trademark, patent, contract, habeas, and civil rights violations. The types of proceedings recorded have included injunction motions, summary judgment motions, motions to dismiss, and full jury trials.

The Judiciary has also increased public access to court proceedings in recent years through its digital audio initiative that makes digital audio recordings of courtroom proceedings available on the Public Access to Court Electronic Records (PACER) system, at www.pacer.gov. In 2007, the Judicial Conference began this initiative, used by all bankruptcy courts and a handful of district courts. The recordings are generally made available within 24 hours after the conclusion of a proceeding.

The federal Judiciary also maintains a YouTube channel, at www.youtube.com/uscourts, with video news and information from around the Judiciary. These videos span a diverse range of topics, including bankruptcy how-to's, profiles on careers with the Judiciary, educational resources, public warnings, and news broadcasts. All are publicly available for viewing and commenting. In addition, opinions in all federal courts are available for free and searchable on the GPO's Federal Digital System (FDsys).

The Judiciary recognizes the importance of public access to court proceedings and records. It remains dedicated to enhancing public confidence in the courts and allowing citizens to learn first-hand how our judicial system works, while also ensuring that the litigants appearing in court – both civil and criminal – receive their constitutional right to a fair trial.

3. I applaud your efforts to make final court opinions more freely accessible online through your partnership with the GPO. It is important that the American public is able to access not only final opinions, but to observe the judicial process as it unfolds. The right to access court proceedings has long been guaranteed in our country, and this access has been made available through the technology of the time. You currently provide access through the fee-based PACER web site. You have justified the fees as necessary to pay the costs of service. Despite your effort to offer partial fee waivers and other concessions, I am concerned that the public does not have timely and modern access to public records.

Question: Would you accept an offer – from an independent non-profit – to provide permanent, free, online access to the public of all up-to-date court records found in PACER?

Answer:

The Judiciary would welcome a further dialog with interested parties and we encourage organizations to contact the Administrative Office's Electronic Public Access program staff directly regarding PACER issues.

The Judiciary's partnership with GPO to provide court opinions on-line without charge has been very successful and we appreciate the acknowledgment of the impact that program has had on public access. We can report that 11 of the 13 federal appellate courts have now joined this program and almost half of the district and bankruptcy courts currently participate as well – and the number is growing. The GPO reports that federal court opinions are one of the most utilized collections on FDsys, which includes the Federal Register and Congressional bills and reports. The Judiciary is proud of the commitment it has made to effective public access through the PACER system over the past 25 years. In addition to the GPO opinions program, we would note a number of other initiatives and policies designed to provide easy and affordable access to court information:

- Every courthouse has public access terminals in the clerk's office to provide access to PACER and other services, such as credit counseling. The \$0.10 per page fee is not charged for viewing case information or documents on PACER at the public access terminals in the courthouses.
- The Judicial Conference has a fee exemption and waiver policy in place. As a result, approximately 20 percent of all PACER usage is performed by users who are exempt from any charge – including indigents, case trustees, academic researchers, CJA attorneys, and *pro bono* attorneys. In addition, if an individual account does not reach \$15 quarterly, no fee is charged at all. In a given fiscal year, *approximately 75 percent* of active PACER users have some or all of their charges waived.
- The majority of fee revenue comes from a handful of users, with less than 1 percent of accounts generating more than 65 percent of revenue. The largest account belongs to the Department of Justice (DOJ) with approximately 16,500 users. Other than the

DOJ, the top users are major commercial enterprises, large law firms, and financial institutions. These users collect massive amounts of data, often for aggregation and resale, which is permissible.

- Parties to a court case receive a copy of filings in the case at no charge.
- In addition to PACER access, which allows users to "pull" information from the courts, approximately 55 district courts and 90 bankruptcy courts are using a common, free internet tool, RSS, to "push" notification of docket activity to users who subscribe to their RSS feeds, much like a Congressional committee might notify its RSS subscribers of press releases, hearings, or markups.

The Judiciary is very interested in collecting feedback from our users – which include independent, non-profit organizations. As recently as 2012, we conducted an assessment of user satisfaction which revealed that overall satisfaction increased significantly since an earlier assessment in 2009. Nearly all respondents are satisfied with PACER overall (90 percent), compared to 75 percent satisfied in 2009. The percent dissatisfied decreased substantially to 3 percent from 15 percent in 2009. Additionally, the current average satisfaction rating is 4.26 out of a possible 5, compared to 3.97 in 2009. In general, users express satisfaction with the current pricing of PACER. Users continue to be satisfied with the value of PACER for the money they pay, giving it an average satisfaction rating of 4.18 with 81 percent satisfied and 13 percent neutral. Users also continue to be satisfied with how PACER is priced, giving it an average satisfaction rating of 4.01 with 73 percent satisfied and 22 percent neutral.

Notwithstanding these accomplishments, we continue to work to improve and modernize PACER services. The initial releases of the next generation of the Judiciary's case management systems are scheduled to begin deployment later this year and they will bring improved services, interfaces and enhanced security to PACER users.

- 4. According to your appropriations justifications, the cost of offering online public access to court records has grown consistently and substantially. At the same time, the market cost of offering access to digital records has continued to plummet. The GSA has established special vehicles for federal entities use these services. The Department of Homeland Security, among many others, is using these security-certified services and saving a great deal of money.**

Question: Why haven't the US Courts done this for public court records?

Answer:

The development of case management systems that support electronic filing of court documents, and PACER, which provides electronic access to those records, has fundamentally changed how federal courts, and the lawyers, judges and staff who work in them, perform their jobs. PACER and Case Management and Electronic Case Files (CM/ECF) are dynamic systems

that provide real time access to electronic case files and require broad and comprehensive systems to maintain and update those records. This is unlike digital records from agencies that can be placed in a repository without any interface with systems that change/update that information daily.

At the same time, the Judiciary has worked diligently to contain costs and ensure that the costs associated with PACER access are reasonable. Significant investments have been made to improve the IT infrastructure that supports CM/ECF and PACER. Programs like Electronic Bankruptcy Noticing improve the service that bankruptcy courts provide to debtors and creditors and save millions of dollars each year.

It is important to note that the Judiciary's Electronic Public Access Program encompasses more than just offering real-time access to electronic records. Congress has authorized the Judiciary to utilize EPA fee revenue to fund program expenses and enhancements that increase public access to the courts, including court websites, on-line juror services, courtroom technology, the Judiciary's Case Management and Electronic Case Filing system (CM/ECF), electronic bankruptcy noticing and Violent Crime Control Act Victim Notification. The next generation of the Judiciary's case management systems will also offer additional services to the public.

Security

- 5. The issue of physical security at federal courts has been of major concern in recent years. At the same time, sequestration resulted in major cuts to existing security practices.**

Question: Can you tell us about the current state of security of federal courts and what areas you've identified as in need of improvement?

Answer:

Currently, adequate security is provided at federal courts by the U.S. Marshals Service (USMS) and the Federal Protective Service (FPS). Going forward, the Judiciary is concerned about implementing the Homeland Security Presidential Directive (HSPD)-12 requirements for Personal Identity Verification (PIV) and Personal Identity Verification-Interoperable (PIV-I) cards throughout the federal court system. HSPD-12 established a mandatory, government-wide standard for a secure and reliable form of identification for federal employees and contractors in the executive branch. The Judiciary is not legally required to comply with HSPD-12; however, because the Judiciary is housed in facilities owned or controlled by the executive branch, and protected by executive branch entities, the Judicial Conference endorsed the Judiciary's participation in the program. The costs of implementing HSPD-12 are significant, and the specific requirements continue to evolve. The Judiciary's FY 2015 request includes \$3.5 million in the Judiciary Information Technology Fund for continued implementation of HSPD-12 requirements.

On a related issue, the USMS has advised the Judiciary that the physical access control systems (PACS) (e.g., card readers) at many court facilities are aging into obsolescence. Since FY 2010, the USMS has been upgrading old PACS with new equipment; however, the USMS has experienced difficulties in keeping up with the rate of system failure and the continually changing federal standards for PACS. This may be a challenging issue for the Judiciary in the near future. The Judiciary's FY 2015 request includes \$5.2 million for access control system upgrades.

- 6. Question: One year after the 30 percent cut in federal court security systems, how have the courts managed to bring security back to the levels necessary for adequate safety?**

Answer:

The FY 2013 sequestration cut to security systems and equipment funding required the USMS to only complete the most essential security systems and equipment projects in FY 2013, and to postpone other important projects until later fiscal years. The FY 2014 enacted Court Security appropriation provided essentially the full amount requested for security systems and equipment. The USMS has sufficient funding this fiscal year to begin addressing many of the projects that were postponed in FY 2013 due to sequestration.

- 7. Question: You are requesting a 6.7 percent increase in court security account funds for FY2015, how will security be negatively affected if this request is not granted?**

Answer:

Due to the annual wage rate adjustments for court security officers (CSOs) and FPS guards provided for under the provisions of the McNamara O'Hara Service Contract Act, Court Security costs increase each year even when there are no changes to the security services provided. If the FY 2015 enacted budget does not increase the Court Security appropriation, the Judiciary would need to cut the funding it provides to the USMS for CSOs and security systems and equipment. Authorized CSO posts, which are necessary to protect judges, court staff, litigants, and the public, would not be appropriately staffed because CSO hours would be reduced. Critical security systems and equipment projects would be cancelled or delayed. Hence, there would be a significant adverse impact on the security provided at federal court facilities.

Information Security

- 8. We've seen an increasing trend in the number of cyber attacks on government websites by hackers trying to improperly access government information. The steps that the Judiciary has taken in recent years to shift its case information to electronic form, while making the system more efficient and more easily accessible to the public, have also increased our chances for cyber attack. This is especially alarming given the kinds of personal information the courts keep on file.**

Question: With the passing of the omnibus bill, what is the outlook for these programs?

Answer:

With enactment of the FY 2014 omnibus appropriations bill, some additional investments are being made to enhance the Judiciary's ability to detect, contain, and analyze attacks against Judiciary information systems. The new technologies being deployed will give visibility into attacks (often referred to as advanced persistent threats) that do not follow the same attack patterns as those readily identified by the Judiciary's current security technologies. Further, the Judiciary is enhancing its resistance to distributed denial of service (DDoS) attacks, which have become a source of service disruption for both government and commercial entities. IT security threats are growing in both number and sophistication, and to the extent funding allows, the Judiciary's national IT security program likewise evolves its defenses to ensure that the confidentiality, integrity, and availability of Judiciary information and information systems is maintained in an increasingly hostile environment.

9. Question: How have sequestration cuts adversely affected the present security of this important information?

Answer:

The Judiciary implements a defense-in-depth strategy as part of its national IT security program. Elements of this program include a number of perimeter defenses such as firewalls, host and network-based intrusion detection and prevention systems, internet proxies for web-based threat protection, and incident management support to all Judiciary organizations.

During sequestration, the Judiciary funded these IT security activities to the extent possible; fortunately, no significant security breaches are known to have occurred. However, some areas of the security program had to be curtailed during sequestration. For example, the number of IT security assessments done for local courts in order to evaluate their security posture was reduced, and funds were not available for some enhancements to the national security program. The Judiciary's FY 2014 financial plan contains funding to restore the number of assessments and fund certain IT enhancements as noted in the response to the previous question.

Mental Health Treatment Cuts

10. Sequestration's cuts to mental health services were especially troubling.

Question: Can you tell us about the mental health services that the judiciary currently provides and what the subcommittee can do to help bolster the impact these programs have on public safety?

Answer:

Substance abuse and mental health treatment are interventions that help U.S. probation and pretrial services officers supervise defendants and offenders in the community with the goal

of making them productive members of society. Substance abuse treatment, which includes drug testing and services such as intake assessments, individual counseling, group counseling, cognitive behavioral counseling, and residential treatment, is provided to persons who abuse illegal drugs, prescription drugs, or alcohol. Mental health treatment, which includes services such as psychological/psychiatric evaluations, individual counseling, family counseling, or group counseling, and medication monitoring, is provided to persons who suffer from mental health disorders. These persons either are under pretrial supervision while awaiting a court appearance, on probation, or on supervised release after serving time in prison.

Treatment is ordered by a U.S. district court as a condition of releasing defendants and offenders to the community. Substance abuse and mental health treatment provide officers with the ability to identify, assess, and provide care for defendants and offenders with substance abuse and mental health disorders. Treatment is key to enforcing the conditions set for their release, ensuring that they choose to obey the law rather than commit crimes, and controlling the danger they may pose to the community.

Treatment comes either from community programs that provide services at no cost to the Judiciary or from treatment providers who are under contract with probation and pretrial services offices around the country. Individuals with mental health disorders have varying degrees of biological, social, and environmental characteristics and the need for treatment often encompasses the entire term of supervision and beyond. Since the goal of mental health treatment is for the individual to become capable of sustaining his or her own mental health stability, the focus is linking them with community-based resources. Most individuals with mental health disorders are entitled to services from community mental health centers, and many in this population are also eligible for benefits through Social Security Disability Income, Medicare, Medicaid, and now also expanded coverage under the Affordable Care Act.

The Director of the Administrative Office of the U.S. Courts, under 18 U.S.C. § 3672, has the authority to “contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol dependent person, an addict, or a drug-dependent person, or a person suffering from a psychiatric disorder within the meaning of section 2 of the Public Health Service Act.” Similar authority to contract for services for pretrial defendants released in the community exists under 18 U.S.C. § 3154. Treatment providers nationwide provide services under contracts awarded through a competitive process. The national treatment services statement of work contains over sixty different services to address substance abuse testing and treatment, mental health treatment, and sex offender treatment, as no single treatment approach will help every person. To be able to address defendants’ and offenders’ individual risks and needs, officers require access to various types of treatment (both contract and non-contract).

Sequestration resulted in cuts to the funding allotted for contract treatment services. The courts managed these cuts by trying to find free services in the community, relying on private or public insurance programs, or in some cases, reducing the amount of testing and treatment that was offered to defendants and offenders. The Administrative Office will be measuring what impact these reductions in services may have had on supervision outcomes. As a result of the

funding Congress provided the Judiciary in the FY 2014 omnibus appropriations bill, drug and mental health testing and treatment services are fully funded.

Because effective treatment interventions rely on continuity of services, it is vital that the Financial Services and General Government appropriations subcommittee recommends, and Congress passes, sufficient appropriations for the Judiciary in FY 2015 and beyond so that disruptions in drug and mental health testing and treatment services do not occur.

Financial Services and General Government Subcommittee
Hearing on the Judiciary FY 2015 Budget
for The Honorable John D. Bates, Director, Administrative Office of
the United States Courts

Questions for the Record Submitted by Congresswoman Jaime Herrera
Beutler

Reporting Requirements

1. In Washington State, the biggest issue the Eastern and Western District Courts is facing is the large caseload of Social Security disability filings. Last year, there were over 800 cases for Social Security disability in the Western District and over 700 in the Eastern District. This year, the Western District expects that to rise to over 1,300 cases. With the limited number of judges in each court, there are over 150 cases for each judge in the Western District – far more opinions than each judge could write – and the weighted caseload is at 630. Currently, the Western District is being evaluated for an additional Magistrate Judge. I believe there is a formula for determining additional Magistrate Judges for the District Courts. However, despite the heavy caseload in the Eastern District they still have not received an additional Magistrate.

Question: Can you please provide additional information how the Administrative Office determines additional Magistrate Judges for District Courts? Also, please keep me updated as to the status of the evaluation and determination for an additional Magistrate in the Western District?

Answer:

Authorization of Magistrate Judge Positions

Magistrate judge positions are authorized by the Judicial Conference of the United States under the Federal Magistrates Act, 28 U.S.C. § 633. The Judicial Conference's recommendations concerning magistrate judge positions are subject to subsequent funding by the Congress through the annual appropriations process. In determining the number, locations, and arrangements of the magistrate judge positions, the Judicial Conference considers the recommendations of: (1) the appointing district court; (2) the pertinent circuit's judicial council; and (3) the Director of the Administrative Office of the United States Courts.

Acting through its Committee on the Administration of the Magistrate Judges System (Committee), the Judicial Conference considers the following criteria when evaluating requests for additional full-time magistrate judge positions:

- the comparative need of the district judges for the assistance of magistrate judges and the overall workload of the district court;
- the commitment of the court to the effective utilization of magistrate judges; and

- the availability of sufficient work of the sort that the district judges wish to assign to magistrate judges to justify the authorization of additional full-time positions.

An important factor in considering a court's comparative need for additional magistrate judge resources is its ratio of magistrate judges to district judges within the district. The current national average of full-time magistrate judge positions to district judgeships is 1:1.3.

Authorization of a higher ratio than the national average generally requires: (1) a heavy per district judgeship caseload; (2) effective utilization of existing magistrate judge resources; or (3) other special caseload factors or unusual circumstances.

The Committee further considers the areas and population to be served, convenience to the public and bar, the rights of criminal defendants to prompt court proceedings, the number and extent of federally-administered lands in the district, transportation and communication facilities, and other pertinent local conditions. When reviewing a court's request for conversion or consolidation of magistrate judge positions from part-time to full-time status, the Committee also considers the expressed preference of the Conference and the Congress for a system of full-time rather than part-time judicial officers. 28 U.S.C. § 633(a)(3).

In making its determinations as to the feasibility of each magistrate judge position, the Committee, the district court, and the circuit judicial council are provided with a survey report prepared by the Director of the Administrative Office containing detailed statistical data and other factual information on the workload and resources of the district court, together with the Director's specific recommendations. The survey analyzes the court's present and projected use of its magistrate judges and includes extensive information on the work performed by the magistrate judges. Statistics provide the foundation for the analysis and the recommendations presented by the Committee to the Conference. Because of the number and complexity of the factors to be considered, the variations in the sizes and caseloads of the districts, and the myriad ways magistrate judges are used by the courts, the Conference cannot apply a rigid statistical formula when authorizing magistrate judge positions. Rather, the Conference reviews each position on a case-by-case basis, taking into account all relevant factors.

The Request of the Western District of Washington for a Sixth Full-Time Magistrate Judge Position

The Western District of Washington has requested authorization of a sixth full-time magistrate judge position. The court's request has been placed on the agenda of the Committee for consideration at its June 2014 meeting. The Director of the Administrative Office is preparing a survey report analyzing the court's request. The report will be presented to the court and the Judicial Council for the Ninth Circuit Court of Appeals for comment prior to the Committee's June 2014 meeting. Should the Committee recommend that a sixth full-time magistrate judge position should be authorized for the court, that recommendation will then be considered at the September 2014 session of the Judicial Conference of the United States. And should the Conference approve the authorization of a sixth full-time magistrate judge position for the Western District of Washington at its September 2014 session, funding for the position will be included in the Judiciary's FY 2016 budget request to Congress.

THURSDAY, APRIL 3, 2014.

SMALL BUSINESS ADMINISTRATION

WITNESS

MARIANNE O'BRIEN MARKOWITZ, ACTING ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION

Mr. CRENSHAW. The hearing will come to order.

I would like to welcome to our subcommittee our witness today, Acting Administrator Marianne Markowitz from the Small Business Administration. Thank you for being here to testify.

Although the new SBA administrator has been confirmed, we felt we might give her a chance to get settled before we asked her to come over and testify. The SBA plays a critical role in assisting small businesses by providing them with access to capital, opportunities to compete for government contracts, counseling, and technical assistance. In addition, the SBA helps businesses and homeowners affected by disasters through the disaster loan program.

I would like to highlight a few SBA-related successes in my district. Heavy Equipment Resources of Florida is a company in Jacksonville and it has been named the Florida Small Business Exporter of the Year by the SBA. This Florida small business specializes in exporting components and heavy machinery to mining and earthwork companies all over the world. In addition, the Jacksonville Women's Business Center won the SBA's women's business center excellence award for Florida. I am proud of all the work that the small businesses in my district do and I appreciate that the SBA does a great deal to help them get started, to grow, and to succeed.

The Fiscal Year 2015 request for the Small Business Administration totals \$865 million. That is a \$64 million decrease from the fiscal year 2014 levels. This decrease is primarily due to the decrease in the business loan subsidy program. Since the financial crisis has wound down, the cost of subsidizing small business loans has gone down, and this is good news for U.S. small businesses and it also shows that the economy is growing stronger and businesses are thriving.

While there is bipartisan support for helping small businesses, we need to make sure that your programs are administered efficiently and effectively and that we are not wasting taxpayers funding on ineffective programs. With that in mind we want to hear about areas where the SBA can do more with less.

The SBA Fiscal Year 2015 request asks for \$155 million for Stafford Act disaster loan administration and \$32 million for the non-Stafford Act disaster administration. In 2013 the Congress passed the disaster relief appropriations act, to support the SBA's efforts and to help in the northeast region after Hurricane Sandy. The

SBA has continued to carry over large amounts of no-year funding for the disaster subsidy. As of your last monthly report, the SBA has \$736 million in subsidy funding supporting 8.7 billion in available disaster loan program funds, and yet the SBA has spent \$82 million in administration, but only \$15 million on subsidy funds. So I am interested to hear how the SBA justifies spending more on administration than it does on program costs.

Whether it is counseling small businesses that are just starting or helping businesses scale up, the SBA has a very important role to play in helping the U.S. economy grow. It is critical that the funding this committee appropriates to the SBA, is used thoughtfully and judiciously.

This committee is very interested in hearing exactly what the SBA is doing to further promote small businesses and their access to capital.

So thank you for being here today. We look forward to your testimony.

And now I would like to recognize the ranking member, Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

I would also like to join you in welcoming Ms. O'Brien Markowitz, acting administrator of the Small Business Administration to the hearing today.

Small businesses are invaluable engines of economic growth, job creation, and innovation, and I am pleased to be able to discuss these important issues today.

The SBA represents the Federal Government's investment in this critical part of our economy. You have the important job of nurturing and facilitating entrepreneurship while also making sure that people who have been historically underserved by bank loans, like women, minorities and veterans, have opportunities to grow their businesses. When these individuals have good ideas and firm foundations for their new businesses, they deserve help to succeed.

As our economy improves we need to make sure that we can are taking fostering and supporting new ideas and new businesses in every segment of our society. As I examine your fiscal year 2015 budget request, I am concerned that you are again proposing to cut funding to the PRIME program. These grants fund technical assistance, capacity building and research and development for organizations that help low income entrepreneurs. This program is crucial to helping small businesses get off the ground. So I hope that this subcommittee will once again reject this proposed cut.

I am encouraged, however, by the continued funding for the Micro Loan program. This critical program funds the start-up and expansion of small businesses that only need small amounts of money to succeed. I hope that this commitment can be maintained and extended to other programming.

I thank you for your service and for appearing before us today. I look forward to discussing the important work of the SBA with you in more detail, and once again, thank you for your service.

Mr. CRENSHAW. I would like to recognize the Acting Administrator. Your written statement will be made a part of the record, and the floor is yours to give us your testimony.

Ms. MARKOWITZ. Thank you, Chairman Crenshaw.

Thank you, Ranking Member Serrano, and distinguished members of the subcommittee for this opportunity to testify today.

We appreciate your ongoing support for the SBA as we work to assist the entrepreneurs who are creating the majority of new jobs in this country. We know you share our commitment to America's small businesses.

We remain focused on our core mission. We call it Three Cs and a D. Helping small businesses access capital, contracts, counseling, and disaster assistance. The SBA is pursuing programs to help small businesses export for the first time, to help early stage start-ups get the capital they need, and to help existing companies scale up, create more jobs to grow our economy.

Last year was the third straight year that the SBA supported over \$29 billion in lending to more than 47,000 small businesses. We also assisted more than 46,000 businesses and individuals through \$2.8 billion in disaster lending.

For fiscal year 2015, the SBA is requesting an appropriation of \$710 million. This funding would enable us to support loans totaling \$36.5 billion over the next year. Our budget request would allow us to deploy nearly 4 billion in long term investment capital. It would facilitate access to \$80 billion in Federal contracts for small businesses who are too often shortchanged in our procurement processes.

Additionally, it would enable us to work with our resource partners to counsel and train more than 1 million small business owners over the next year so they can grow their companies and create more middle class jobs.

We are seeking full funding for our Small Business Development Centers, our Women's Business Centers, our Veteran's Business Outreach Centers and our national network of SCORE mentors and volunteers.

Notably, our fiscal year 2015 budget request represents a \$64 million reduction in our business loan subsidy. We have dramatically reduced our subsidy for the 504 loan program down to \$45 million, and I am proud to report that for the second consecutive year the SBA is requesting no credit subsidy for the 7a loan program. We are making good loans to responsible borrowers and we are managing our risk under these programs that we are good stewards of taxpayer dollars.

Our borrowers report that these programs, the 7a and 504 programs together, support over 650,000 jobs in this country.

We are requesting authority to continue 504 refinancing lending. This program allows business owners to refinance existing debt and lower their monthly business costs. 504 Refi was a successful program that expired at the end of fiscal year 2012. It supported \$5.5 billion in lending over just 2 years. We are requesting zero subsidy, meaning that we can project no taxpayer cost to extend this program.

We are focusing on helping our innovators take new products and services to market. Our request for \$4 billion in lending authority for Small Business Investment Companies will ensure that our most cutting edge small businesses, including advanced manufacturers, have the capital that they need.

We are helping start-ups through our growth accelerators program. We are working with nonprofits, universities, and other partners with a demonstrated expertise in turning promising new ideas into successful new businesses.

Our budget ensures that our transitioning military veterans come home with new opportunities to grow the American economy. Each year, more than 250,000 service members transition home. We know these heroes have the leadership skills to grow successful civilian enterprises as small business owners. Our Boots to Business program allows them to continue to serve their country as job creators. We are requesting \$7 million to meet Department of Defense's request for SBA to train transitioning service members at more than 200 installations. We are also making it easier for veterans to access capital by reducing or eliminating fees on SBA loans.

We are prioritizing entrepreneurial education so successful small businesses can become medium and large businesses that create more jobs. This initiative builds on the success of our Emerging Leaders program. To date, two out of three companies that have been through this program have increased their revenue, three out of four have hired new employees, and nearly half have secured government contracts. We are requesting 15 million to expand a program with proven results.

We are also asking for full funding for disaster loan assistance as we continue to make process reforms to ensure that homeowners, renters, and businesses have access to rapid SBA assistance when they need us the most.

I would like to close by addressing SBA's ongoing commitment to root out waste, fraud and abuse in our contracting and lending programs to ensure that Federal dollars go to deserving small businesses. We have a zero tolerance policy for these types of abuses. Since 2008, we suspended and debarred more companies and individuals for abusing SBA programs than in the previous 10 years combined.

At the same time we have tightened our belts within our own operations at the SBA. We are saving \$600,000 in rent by moving our DC office into our SBA national headquarters. We have reduced our fleet management expenses by 9 percent through reductions in our fleet. We have invested in new equipment that will save us a half million dollars in copying expenses over the next 5 years, and we have reduced SBA travel expense 25 percent compared to fiscal year 2012 levels.

We are committed to fiscal discipline at the SBA, and we hope that this subcommittee will factor that in as it weighs its support of a critical programs that serve America's small businesses. Thank you.

Mr. CRENSHAW. Well, thank you very much.

And I think you know this committee has been very supportive of the SBA over the years, and rightly so. We appreciate the good work that you have been doing.

[The information follows:]



**U.S. Small Business Administration
Washington, D.C. 20416**

TESTIMONY of

**MARIANNE O'BRIEN MARKOWITZ
Acting Administrator, U.S. Small Business Administration**

**House Committee on Appropriations
Financial Services and General Government Subcommittee**

Thursday, April 3, 2014

Chairman Crenshaw, Vice Chairman Diaz-Balart, Ranking Member Serrano and distinguished members of this Subcommittee, thank you for this opportunity to testify today.

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\$80 billion in federal contracts for small businesses, which are too often shortchanged in our procurement processes.

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We're focused on helping our innovators take new products and services to market. Our request for \$4 billion in lending authority for Small Business Investment Companies will ensure that our most cutting-edge small businesses – including advanced manufacturing firms – have the capital they need. Products that can be invented here can be made here, too.

We're helping start-ups through our growth accelerators program. We're working with nonprofits, universities and other partners with a demonstrated expertise in turning promising new ideas into successful new businesses.

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The SBA is making it easier for lenders to do business with us. We will soon roll out our SBA One program. This is a major reform that will create a streamlined, online application for our products. SBA One will reduce burdens on lenders and encourage them to make more SBA loans.

We're prioritizing Entrepreneurial Education, so successful small businesses can become medium and large businesses that create more jobs. This initiative builds on the success of our Emerging Leaders program. To date, 2 out of 3 companies that have been through this program have increased their revenue; 3 out of 4 have hired new employees; and nearly half have secured government contracts. We're requesting \$15 million to expand a program with proven results.

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We are committed to fiscal discipline at the SBA, and we hope this subcommittee will factor that in as it weighs its support of critical programs that serve America's small businesses. Thank you.

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Marianne O'Brien Markowitz

Acting Administrator

Marianne O'Brien Markowitz assumed the role of Acting Administrator of the U.S. Small Business Administration on February 8, 2014. As Acting Administrator, Markowitz leads a team of more than 3,000 employees and manages the agency's portfolio--including more than \$90 billion in loan guarantees--and \$100 billion in federal contracting opportunities. In addition, Markowitz oversees and supports counseling and technical assistance to more than one million entrepreneurs as well as disaster assistance to small businesses and homeowners.

Before being named Acting Administrator, Markowitz served as Regional Administrator for SBA's Midwest Region, Region V, a position she had held since August of 2009. As regional administrator, Markowitz was responsible for the delivery of the agency's financial assistance, technical assistance and government contracting activities throughout Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin. As part of her work in the region, Chicago Mayor Rahm Emanuel appointed Markowitz to serve on the City of Chicago's Small Business Advisory Council in March of 2013.

Prior to her time at SBA, Markowitz served as the Chief Financial Officer for Obama for America in 2008 and was previously a financial operations consultant for the launch of the Obama Exploratory Committee. She served on the Obama for America Board of Directors from 2007 to 2009.

For more than 17 years, Markowitz provided finance and risk management expertise to a host of leading global institutions including Switzerland-based Syngenta, Inc., the world's largest agrochemical company, where she served as a lead international treasury/financial operations consultant. While at Syngenta, Inc., she was tasked with designing and implementing a global treasury operation and financing post demerger. Prior to that, she served as a treasury and risk manager for one of the largest pharmaceutical benefit management companies Express Scripts, Inc. Additionally, while at Mallinckrodt, Inc., a medical device firm, Markowitz worked to create the global treasury department after its divestiture from IMC Global.

In addition to designing and implementing financial operations departments, Markowitz has a deep background in running treasury and risk management departments, assessing insurable risks and evaluating insurance, treasury and financing alternatives.

In all her roles, Markowitz specialized in helping private sector companies successfully design and implement new systems or scale their existing processes, systems and staffing to meet the needs of a hyper-growth environment.

She received a B.S. from the University of Missouri and an M.B.A. from DePaul University. She sits on the board of the Lycee Francais de Chicago and is a member of the Chicago Economic Club. She and her husband Jeffrey are the proud parents of Maura.

Mr. CRENSHAW. One of the things I want to ask about is in terms of the dollars we appropriated for disaster administration and disaster loan subsidy funding over the years. I think it was in 2013, it was \$800 million for Hurricane Sandy, and then for fiscal year 2015, the total request for disaster loan administration is \$187 million.

As I said in my opening statement, you tend to carry over large amounts of funding for disaster subsidy. And I guess the question is if you look at last month's report, you had \$736 million in subsidy and \$296 million in administrative funding through February of this year.

But, you had only spent \$15 million on disaster subsidy and \$82 million on the administration of these funds, and we want to be sure that the disaster victims get all the resources they need and we appreciate the work that you do, but it seems like that might be out of balance; and so can you tell us how you justify that funding imbalance?

Ms. MARKOWITZ. Sure, thank you Chairman Crenshaw.

And before I start with my answer, I want to thank you and your subcommittee for all your hard work that enabled us to have the 2014 budget and allowed us to enact the programs that we need to support our mission and our small businesses.

Around the funding for disasters, our actual request for 187 in administrative Stafford, non-Stafford funds is actually a reduction from the year before, which was 192, and that reduction was because we made process improvements in our administrative functions. The way the disaster loan program works is actually quite efficient. It is flexible.

So in between catastrophic disasters, we have a core level employment and we scale up very quickly after a disaster. Going into Sandy, we had about 1,100 employees; just after Sandy we had 2400 on staff because we keep a stable of on-call employees at the ready who are fully trained.

We have been able to reduce our funding request because we were able to take a hard look at that core employment number that we keep in place to manage floods and droughts and ongoing disasters and we were able to reduce it because of process improvements we made around our queueing systems, but also because we rely more heavily on innovations in technology. So we rely more heavily on electronic loan application processes. So we saw that adoption go up quite a bit after Sandy. About 33 percent before Sandy and 55 percent after Sandy. So we continue to make improvements in our administrative areas in disaster.

And regarding the amount that we requested for Sandy, we acknowledge there was a mismatch in terms what we requested and what we ultimately needed. But the reason for this is we go off past history in our disasters. The scope and the scale of this disaster was quite large and looking at our past disasters, we made some estimates. But what we didn't anticipate was that in this disaster the demographic was very different. They had access to insurance, or they had insurance. They had access to quite a bit of equity in their homes. They also had access to commercial programs that were more competitive than the programs that we can offered. So the demand didn't ultimately happen in the way that we

thought it would and that is the reason there was a bit of a mismatch.

So we continue to look at this. There is always lessons learned from disasters. We continue to refine not only the way that we estimate our need, but also our administrative functions.

Mr. CRENSHAW. Well you have \$297 million carried over and then ask for 187 for next year—is that normal? Do you always have that kind of carryover balance?

Ms. MARKOWITZ. I can honestly say that in my 2 months as acting administrator I haven't familiarized myself with that level of detail as to how they managed that.

Mr. CRENSHAW. Okay. That might be something to look into because if you have got almost \$300 million in the bank, that is for administrative expenses, to ask for more on top of that there might be a better way to deal with that.

Ms. MARKOWITZ. Yes, we will continue to look into that. Thank you.

Mr. CRENSHAW. Thank you very much.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

So you have been acting SBA administrator since February 8th of this year?

Ms. MARKOWITZ. That is correct.

Mr. SERRANO. And have served as the administrator for the SBA midwest region, Region 5, since August of 2009? How has serving as Acting Administrator changed your impression of the SBA and its ability to assist small businesses around the country? Because, you know, we speak a lot in Congress about small businesses. In fact there are many of us who feel that that is the engine that drives the economy, and yet the SBA takes both a lot of support and a lot of criticism; how do you see it now in this new role that you have?

Ms. MARKOWITZ. Thank you, Ranking Member Serrano.

That is an interesting question. I mean, I loved my role as regional administrator and it has been really interesting to be on the ground working with small businesses face-to-face in understanding their needs and also seeing how we address their needs, you know in many cases very well.

Being the head of the agency for a short time, you know, I have seen how it all comes together. So I mean, I think I don't know if it has changed my perspective. I guess I have a fuller understanding of how the agency works together and all the programs that work to support us in the field. And I have a better appreciation for all the work that goes on at headquarters to ultimately support the field.

Mr. SERRANO. Um-hmm, and let me ask you a question, one of the issues that always comes up all the time that I have been on this subcommittee, both as chairman and as ranking member; is whether or not the disaster fund is in good shape, and notwithstanding a lot of discussions we have had in this country about global warming, or now it is called climate change. You know it is the same with liberals. We used to be called liberals. Now we are called progressives.

Ms. MARKOWITZ. Um-hmm.

Mr. SERRANO. So we have climate change now. It looks like this is not going to end for a while. There will be need for assistance. And what shape are we in? Or is that something where SBA feels that as the issues come up, they will come to Congress to ask for help?

Ms. MARKOWITZ. You know, I don't—

Mr. SERRANO. I mean, because unfortunately the next Sandy we can't predict it. But everything indicates, that there will be the next Sandy somewhere, and the devastation that is left behind is something that certainly in New York, where we are used to a couple of inches of snow and people get upset about that, but this was a devastation that we had seen only in videos from other parts of the south and the midwest and had not experienced. You wonder what shape are we in to meet those disasters in the future.

Ms. MARKOWITZ. Thank you, Ranking Member Serrano.

I can tell you that in my time here I have gotten to know more about disaster. I haven't familiarized myself with how they estimate and move forward with how they decide how well funded they are. But I can tell you we have a lot of experience in that area. We have a 20-plus-year employee that runs disaster, we continue to have lessons learned, both administratively and also on the you know, on the funding side from every disaster. We take those on-board and we continue to reengineer, we continue to make process improvements in that area.

Mr. SERRANO. Another question. You are asking a 60.3 million decrease from fiscal year 2014 level for SBA. This seems to be largely due to the decrease in loan subsidies. What does this say about the state of the economy, how many loans will you be able to support with the requested amount? Do you think you will hit the authorized cap for 7a loans this year and has that happened before?

You know any time we see a decrease being asked for, you wonder if it is a budget issue or in fact people see fewer problems coming down the road, which I have just spoken about. So the Request, is the statement more about the economy or about the agency, or both?

Ms. MARKOWITZ. So thank you, Ranking Member Serrano. Let me take your question apart a little bit. The decrease in funding is around if the 504 subsidy, and the cap for the 504 subsidy is 7 billion, and the decrease in subsidy is really because of the improving economy. This is a real estate program, the improving state of our real estate in our country. So that is the reason for that decrease in funding.

The 7a program, the cap is 17.5 billion. This year we had very spiky sort of volume in that program and we are continuing to monitor it. If we feel that we are coming close to the cap in 7a, which we have come close to before, we will come to you for more authority.

For next year we are asking for 17.5, again, because—the way our programs work, they essentially are inversely related to the recovering economy. As the economy recovers the conventional loan market recovers, the gaps in credit shrink and that is where our program lives. We live in the gaps in credit. So as the gaps expand, our programs expand, our loan volume goes up. And as they shrink

our loan volume goes down. So we feel pretty confident about not reaching those caps next year.

Mr. SERRANO. Well, I think for your testimony so far and I can tell you one thing and I say this in support of your agency. You are not one of the agencies that gets mentioned every day on the Floor of the House. But yet when something hits hard you are the first one we go to for help and so do the American people.

So, you certainly have the support of this committee. And I know if I speak for the Chairman, anything we can do to make your work easier and your services better, we will be there.

Thank you.

Ms. MARKOWITZ. Thank you.

Mr. CRENSHAW. Thank you.

Mr. WOMACK.

Mr. WOMACK. Thank you, Mr. Chairman.

And thank you. Madam Acting Administrator O'Brien Markowitz.

I can't believe that Mr. Serrano would ask you questions and that you wouldn't have the answers for. You have been there all of 2 months and you don't know all of this stuff? I am kidding, obviously.

But welcome aboard, and it is a delight to have you before our committee. May I start out by throwing a shoutout to a gentleman in your organization. You probably don't know this guy, and I have never met him but my staff has worked with him. Nick Coutsos—I see a couple of heads nodding over there—worked with one of my constituents on a matter that was critically important, and let me just tell you, when any of us up here, regardless of party affiliation, have an experience that is worth bragging about—I mean, we beat you guys up enough on other things, but when something good happens it is important for people to recognize them, and I sure hope that down the chain Mr. Coutsos will know that his work didn't go unnoticed. But again, I thank you for your time here today.

And I admit that I have another competing subcommittee, Defense, that Mr. Crenshaw and I share, and I am going to have to escape. Thankfully, Mr. Yoder has come in so that you won't have to just look at Serrano and Crenshaw this whole time. I realize that is a problem.

In my district we had an issue with the SBA being sued after they guaranteed a loan for the C&H hog farm, when environmental questions arose after the fact. This, my office was told, created a new review process for Ag loans through the SBA. Now another group of constituents sought help from my office on an Ag loan that they submitted in August, throughout which the SBA kept coming back and kept asking for additional documentation that I guess had not previously been part of the process. So it is frustrating from a staff perspective for my constituents to try to navigate this. So, is there an average timeline for SBA applications?

Ms. MARKOWITZ. Thank you, Congressman WOMACK.

I wish I could give you an average time, but the reality is we have different loan programs that have different averages and every loan is different. In the best case scenario, say in an SBA express loan, it can be approved in the matter of hours. It depends on the lender that you are going through and whether they have

preapproved authority to approve the loans and whether it is a lender that does fewer loans and they have to go back to our service centers. So it really it depends on those factors to some degree.

But also remember that we are coming to you asking for a zero subsidy in the 7a program and is there is a reason for that. We are managing this program well, we are managing the risks in this program and much of that is done in this process that we are talking about right now, the underwriting process and evaluating the loan applications, and the risks that are inherent and the environmental and other issues. So I know it can be frustrating, but that is the reason for this.

Mr. WOMACK. So in the example I just gave that prompted at least to our understanding a new review process on these Ag loans, what would be the protocol that goes into reestablishing a process that would be influenced by a case like our case that drew so much attention after the fact?

Ms. MARKOWITZ. Sure. I wish I could have Karen—I wish she was here to come and testify. Thank you for that question, Congresswoman Womack. I can't give you full details on that, but I can give you a just a brief—my understanding of the issue. And that is——

Mr. WOMACK. Give me your understanding. And if there is a more technical explanation, just provide that to my office would be great.

Ms. MARKOWITZ. Okay.

Mr. WOMACK. We would love to be able to see that so that my staff members can have a better understanding and can explain it to our constituency better and maybe prepare them for what might lie ahead.

Ms. MARKOWITZ. Sure. So, our loan processing revolves around the lender puts in an application, it goes through the service center. If everything is normal and it can be handled at the service center, it is. If there is an question or something that comes up it goes to Sarah's office, she is the general counsel, and they work out the legal issues, and if there is something that they see that could be a reoccurring issue or something that we can use as a lessons learned issue, they work closely with our risk management area and they continue to reengineer the processes around this. So I think that is what we are talking about here.

Mr. WOMACK. Do these changes create a backlog for your agency that might complicate a budget as an example?

Ms. MARKOWITZ. I think what we are talking about are loans that go straight through and they are not held up by the exception items that go off to the side. So there are exception items, like the one I think we are talking about right now, that go off into a side process and are managed thoroughly and thoughtfully by the legal staff.

So I don't think it causes a full backlog of the whole process, but it may cause a little bit of a delay on that particular loan that has a particular issue.

Mr. WOMACK. One other question about technology and your budget. Flexibility, as you know, is a key to success when we are dealing with time frame and resources are strained. So I would like

to just a basic overview of how leveraging of technology within the SBA is helping during these critical resource constrained times.

Ms. MARKOWITZ. Sure.

Well, thank you, Congressman Womack.

That depends on the different areas. We are constantly working to reengineer the technology. Again as I mentioned in disaster we are relying much more heavily on the electronic loan application process which has caused a decrease in our funding request.

We are rolling out SBA One, which is a new heavily streamlined technology-based application process in the rest of our lending programs and that is a huge improvement that is coming later this year. So there is that. There is some technology projects that are on ongoing in our GCBD area. We are continually changing our technology. We just brought on a highly competent brand new CIO who is ramping up her staff and looking at all the ways that we can continue to advance in this area.

Mr. WOMACK. Before I leave and before I close out this—my portion of the hearing, I would just like to be on record as saying congratulations to this agency, Mr. Chairman. You know when I look in here and see that they have made some changes in their travel budget that saved 25 percent, that they have consolidated some office space that is saving \$600,000 and reduced the fleet management expenses by more than 9 percent, it demonstrates to me that the SBA is behaving more like the small businesses that they support, that they recognize that we do live in constrained resource times and that they have got to do their part to root out these kinds of excesses. So I want to congratulate you for that and thank you for your testimony here this morning.

And I yield back.

Ms. MARKOWITZ. Thank you, Congressman.

Mr. CRENSHAW. Thank you.

Mr. Yoder has joined us and he is collecting his thoughts and preparing an exciting question. So, while he does it that, let me ask a question.

We all talk about how half the folks in our country are employed by small businesses and two-thirds of the new jobs that are created and you all do a tremendous job of helping in that. But one of the concerns that I hear from time to time talking to the small business folks is that sometimes maybe you focus on the high growth small businesses that are doing pretty well, and sometimes the true, true small businesses that are just getting started don't always get the same attention; and it would seem that if you are a growing small business, you have I guess easier access to capital than you might when you are just a brand-new start-up.

So can you tell us in your view are we giving enough priority to the true brand new start-ups?

Ms. MARKOWITZ. Thank you, Chairman Crenshaw.

We absolutely are and we help a lot of different businesses in all different areas of their life cycle and start-ups is definitely a focus for us. Outside of access to capital, in this budget we have requested \$5 million for growth accelerators and that is directly targeting, strengthening the start-up ecosystem.

Essentially these accelerators employ experienced entrepreneurs to serve as facilitators to bring together a group of highly vetted,

high potential start-ups and they help them access networks of you know, mentors and other forms of capital, even outside of our programs, venture capital, angel capital, et cetera. That is one area that we are focusing on start-ups.

But in another important way that we are focusing on the access to capital programs is that we have asked to set zero level of fees for loans under 150,000 just for that reason. To spur sort of demand in the lower level, the lower dollar loans. And those are the loans that start-ups are looking for. They are not asking for a million dollars.

And then on the supply study to also spur demand in that area we have introduced the Small Loan Advantage program along with its partner program, the Community Advantage program, and these are just for that reason. We streamlined the platform that our 7a loan program is offered on in the Small Loan Advantage to help encourage banks to make these less profitable loans. A smaller loan is less profitable, has higher risk for the startup and with other industries in certain communities, and to make it more profitable and less time consuming, encouraging the bank to make more loans at that level.

And then the Community Advantage program is for the same reason. To work through mission driven, not-for-profit lenders, with the scaled down streamlined version of our 7a program to help encourage them—give them another tool to make access to capital available to higher risk industries, higher risk communities, and start-ups.

Mr. CRENSHAW. That is great, because one of the things I read is that micro loans, \$50,000 to \$350,000, actually have been on the decline. But it sounds to me like you have recognized that. I was going to ask you about incentives and things, but it sounds like you recognized that and are working to make those loans available.

Because, as you point out, sometimes it takes the same amount of work to make a \$100,000 loan as a million dollar loan. And so banks may say they would rather make the million dollar loan. But I think when we look at small businesses it is important to let our focus be on some of the true start-ups. So thank you for recognizing that.

Ms. MARKOWITZ. Thank you, Chairman.

Mr. CRENSHAW. Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman.

Thank you for joining us today, and appreciate your service at the SBA, and consistent with the Chairman's remarks, I think we all know that job creation, job growth comes from our small businesses, our entrepreneurs.

The Federal Government is not going to grow the jobs that is going to create a rejuvenation of our economy. It is not going to come from big businesses; it is going to come from small businesses, and so we thank you for your work. We know that you are sort of the tip of the spear when it comes to the economy.

We spend a lot of time on both sides of the aisle talking to constituents and talking particularly to small businesses, local companies, whether they be a high-tech start-up or a mom and pop shop that has been on Main Street for 30 years, and spend a lot of time trying to figure out how to help them grow; I know you do the same

thing. I thought you might give us some insight on what you and some of your staff have heard and feedback we should be hearing regarding what holds small businesses from going out and taking risk and maybe adding another employer or employee and expanding.

And I wondered if you could just shed some light on what you hear. And as I have been out in my district, I hear concerns about Federal policy, uncertainty created in Washington policy. Whether it be policies or past, in previous years or policies we are looking at now as we change the rules, it creates I think uncertainties for businesses. That they want to know what the cost of doing business is they wait on us.

I hear concerns about the Dodd-Frank rules being implemented and their impact on community banks and how that might affect local lending. I hear concerns about the Federal tax burden and small businesses concerned about taxes that have gone up in the past few years.

We all hear concerns about the Affordable Care Act and whether businesses can accurately determine what their costs of health care are going to be.

We hear concerns about regulatory costs. That as a new regulation comes down it might have been affect a business and the lack of predictability in that. Immigration concerns come up a lot. Folks having trouble getting access to labor or the rules being difficult for them to follow through. Job training, being one. Whether there is a well prepared labor pool in the region. Maybe businesses say we may go overseas because we don't have access to the engineers that we need locally.

Depending on the businesses, there are a variety of concerns. I just wanted to share with you some of the concerns that I hear and in general I hear that all of these policies together make it difficult for small businesses to calculate the cost of hiring a new person, when they are not sure what their health care costs are going to be, their tax burden is going to be, their regulatory burden is.

And so what do you hear out there and what can we do collaboratively to try to improve the climate to encourage our small businesses to feel comfortable to take risks and hire new people and help get our economy moving again?

Ms. MARKOWITZ. Sure. Thank you Congressman.

We hear a lot of different things from different businesses. Some businesses are more focused on that and some businesses are focused on access to capital and how we can help them with more fundamental counseling around, you know, business decisions. We help businesses with all of this, and we certainly, you know, do a lot to get out and message around changes in our regulatory environment.

We spent a lot of time out on the Small Business Jobs Act, which was the largest piece of legislation to impact small businesses in the last 10 years. It was very positive legislation, so we were out talking about the 17 tax cuts that the President put forward for small businesses.

We went out and did a lot of messaging around the Affordable Care Act, because this a huge law that businesses had to learn about and understand how to respond to, and you know, what I en-

countered in that outreach—I did about 30 seminars on the Affordable Care Act, so I heard a lot from small businesses about this. I first and foremost encountered an awful lot of confusion and that was holding businesses back from doing their detailed analysis about how they could and should respond to this law. So we did a lot of work to clear that up and we continue to work in that area.

And, you know, you would be surprised by how fundamental issues are for businesses when—depends on if you are talking about a startup or a larger business or whether they are focused on regulatory issues or not. We do everything we can through our counseling resources through our field office and structures to meet their needs on these questions.

Mr. YODER. You brought up some of your seminars that you did on the Affordable Care Act. How much new staff time has been devoted towards just the implementation of that? We are kind of at a real hot point right now as the penalties and mandates are going into effect for certain segments of the economy. There have been some delays, which causes you know additional, probably some confusion. Folks don't know what is being implemented and what is not. And both sides have advocated for certain delays. I think that is part of the challenge.

How much time has your staff spent on that? Is there a spike right now? Has it sort of subsided? What sort of traffic are you getting on implementation of that, questions from businesses?

Ms. MARKOWITZ. Sure, Thank you Congressman.

Just to be clear that our field staff is primarily an outreach organization and what we do in our normal operating business is outreach. So we haven't spent any additional time, I mean that is what we do, outreach. And responding to questions about this new law falls in the scope of our duties.

So one really happy by-product that happened as a result of this outreach, there is so much general interest in understanding this law and learning how to respond to it that we reached whole new groups of small businesses. And we often will do a side-by-side seminar, ACA seminar, SBA seminar. So we reached whole new groups with our message, which deepened and broadened our levels of businesses that we touched with our services. So there was no new money or time being it spent. It is just part of our normal activity in the field.

Mr. YODER. And in terms of interest level, is it higher now or are folks sort of getting a good understanding of it? Because, obviously our offices get lots of calls, lots of concerns, lots of just uncertainty. Whether you are for the law or against the law, we can continue to debate that and we do in this town. But your job obviously is not to render a decision on whether it is a good law or bad law, but just to get out and to make sure that whatever laws are the books that people have the information so that they can move forward.

And, I think what we all want is a growing robust, economy and that means that Republicans and Democrats have to work together and ensure that you have the tools necessary when you are out there to answer all the questions that you need and have the resources to help these small businesses.

Because I think, as we started, that is the key to our economy, and so we want to encourage and support your efforts and ensure that we are not doing anything with some of these policies that we have brought forward to make it harder.

And so if you will let us know thing things at least that you are hearing that might allow us to modify policies, make things more effective or at least easier for these businesses to grow and expand, I think we are looking for opportunities for everybody to work together to do that. I appreciate your efforts.

Ms. MARKOWITZ. Thank you.

Mr. YODER. Thank you.

Mr. CRENSHAW. Thank you.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

You know throughout the years that I have been on this committee, from its start-up actually, it existed in the past as the Postal Subcommittee then it came back as the Financial Services Committee, but both as chairman and ranking member there is always something that happens and it is happening again, and that is the disconnect between the support that the PRIME technical assistance program has from Members of Congress and the continued desire by the Administration to get rid of it. And we see it happening again.

First of all, and again it is unfair to ask you questions you know, 2 months in, but is there something about that program that the administration has looked at to see why it is so popular with Members of Congress and why it is so unpopular with you folks? Because it gets restored every year, every year it is almost like a done deal. You propose to get rid of it, you and your predecessors, and then we restore it.

And restoring around here is not something that we take lightly, especially in this climate. You know, people saw things that they really want to restore, and I suspect it is going to happen again this year, or at least there will be a big push to do it. So what do you think is the disconnect?

Ms. MARKOWITZ. Thank you, Mr. Serrano.

Mr. SERRANO. And I am not assuming Members of Congress know best.

Ms. MARKOWITZ. Sure. Well, this sort of links back to your question earlier about how has my perspective changed now that I have had this experience as the acting administrator. As the regional administrator, I know the organizations in my area that benefit from PRIME and who really want PRIME to be restored and I understand the good that it does. Being in this seat, I also understand that as an agency we have to make hard choices and PRIME is one of those hard choices we have to make.

While we fully support the good that it does, you know when you are looking at a whole organization and the funding structure, we also know that we have some overlap and we have some duplication with PRIME and some of our other programs.

And so sitting in this seat we have to make choices around that duplication. That is why we don't always go back and ask for funding in PRIME.

We have, as you mentioned, funding in the micro loan technical assistance area which provides technical assistance to people seeking micro loans by a large and low income areas. This is the same population, the same assistance that PRIME seeks to give.

And then outside of micro lending we have also requested full funding of our resource partner network then which would then give us access to all the counselors through this. SCORE, the SBDC and the Women's Business Center, who also provide technical assistance and counseling in these low income areas.

So that is the main reason. We have nothing against PRIME, we fully applaud the mission. It is really just about making the hard choices that we have to make around the budgeting process.

Mr. SERRANO. So what you are basically saying is that the information that the agency has, which Members of Congress may not have, is that PRIME, while it serves a purpose is a duplication in many cases and that is the reason why year after year people try to get rid of it.

Because I have seen a lot of programs where you have support for it and you have support for it in Congress. But I have never seen one where it is almost like universal the support for it and almost understood that you know, when you are going to look at a budget to put together this bill you almost kind of put that aside and say, well that is going to get funded so let's move on to item two. If you are saying it is a duplication, if that is a case even from a fan like myself, maybe it is time the administration—the Small Business Administration lets Members of Congress know where the duplication is so that we stop this yearly occurrence.

Ms. MARKOWITZ. We can give you more details about how the determination was made to not include PRIME and you can make your own determination about that. But I understand. It is a good program. We really just can't fit everything into our budget. So thank you.

Mr. SERRANO. Okay. But here is my last point on that. I don't want to drive that to death. You say it doesn't fit into the budget so you make that cut. But that is the one that always keeps getting cut. So there must be something more than a budget issue every year. Somebody, somewhere or some folks somewhere in the administration, must feel that this program is not worth a penny, because it just doesn't get reduced, it gets cut every year.

Ms. MARKOWITZ. I can honestly say I don't have the details on that. I only understand it as a budget item and an issue in terms of duplication.

Mr. SERRANO. Well, we would appreciate it if you could get us more information on that.

Ms. MARKOWITZ. Okay.

Mr. SERRANO. For Women owned and minority owned businesses, the Small Business Act sets a government wide goal of 23 percent of Federal procurement contracts going to small businesses with specific goals for different categories of small businesses. Can you tell the subcommittee how the Federal Government is doing on meeting these contracting targets?

Ms. MARKOWITZ. Thank you, Ranking Member Serrano.

We are still analyzing the data from fiscal year 2013, so I can't comment on that today. But we can talk about fiscal year 2012 still and we had some great successes.

We exceeded the 3 percent goal for service disabled veteran-owned businesses for the first time ever, and around our socially disadvantaged or 8a goals, which is 5 percent, we hit an 8 percent target in 2012. So we are excited about that and we are excited about the successes we had that year and we are looking forward to hopefully even more in the future.

Mr. SERRANO. Well, it would help us as a Committee, and I know that the Chairman would agree with this, that when we begin to dissect what this budget will look like, and this bill will look like, we need to know the success stories, and again this is one that always gets looked at because it is minority and women owned businesses. So we need to know to what extent it is succeeding and to what extent it is exceeding our goals.

Ms. MARKOWITZ. Ranking Member Serrano, I can't comment on 2013, but as I said we hit an 8 percent metric around socially disadvantaged in 8a programs in 2012.

We have enacted women's contracting rule to make traction in that area and my understanding is we have made significant progress. We have rolled out some outreach efforts to help that new rule take hold. We are currently involved in a very aggressive Challenge Her campaign around the country, making sure that women understand the benefits that are available to them under this new women's contracting rule, that there are now contracts set aside in over 300 industries, for women to compete against women, so that they have a more level playing field. We are making progress and hopefully we can share those numbers for fiscal year 2013 soon.

Mr. SERRANO. Well, we appreciate that. Mr. Chairman, I would make a request which is a mantra with me as you know. That is if at some time, not necessarily for our budget but for our understanding, they could give us a report on how the Small Business Administration is dealing with the territories and what is being done there or not being done or what needs to be done.

Mr. CRENSHAW. I am sure that they will take that under advisement. I think that is a great idea and gives us a little focus.

Mr. SERRANO. Thank you. Notice he didn't say you should give us a report. He said he will take it under advisement. A very smart Chairman.

Mr. CRENSHAW. They are going to take it under advisement.

Do you have any more questions, Mr. Yoder?

Mr. YODER. Thank you, Mr. Chairman.

I had one quick question related to veterans programs. And I know you have spoken about that and that is in your testimony. I wanted to follow up.

You know, one of the most troubling statistics that I think bothers a lot of us is that 22 veterans die by suicide each day, according to Federal Government statistics. It is a staggering, heartbreaking number. It is much higher than the general population and it speaks to a lot of larger issues that we are working on here.

But I wanted to maybe tie it into some of the work you are doing. The 2014 NDAA act established a study in which the DOD would

examine the ties between the veterans' economic situation and homelessness and suicide. One of the key aspects, in addition to proper mental health treatment, to help veterans succeed and to keep them from being homeless or committing suicide is economic success.

Can you discuss some of the efforts the SBA is making to collaborate with veterans groups, particularly at the Veterans' Business Outreach Center, and are there sufficient resources to assist veterans in the four key areas that the SBA works on, the capital, contracts, counseling, disaster assistance? Thank you.

Ms. MARKOWITZ. Thank you, Congressman.

I would like to highlight Boots to Business, which is a program that we are requesting \$7 million in funding, and it is directly targeting this issue. We know that there are 250,000 veterans returning each year transitioning. They all need an opportunity. That opportunity can take many forms. It can be going out finding a job or can be creating a job, and we are stepping forward to help with that process.

We know that these veterans have leadership skills that we can help them port into success into the private enterprises. We also know that these veterans over index in entrepreneurship already.

So the Boots to Business program is in partnership with the Department of Defense. We go out and meet these veterans at 200 installations around the world during their transition process and we begin by showing them a short video on entrepreneurship. And if that is something they are interested in, we take them further. We do 2-day face-to-face training and then an 8-week training course. We are very excited about this, we know that it gives them confidence and skills that they need to pursue entrepreneurship as an option.

We have also gone down the access to capital route and made our loans more available to them. We have a patriot pledge that we have asked banks to enter into to increase their lending to veterans, and then we have also set the fee at zero or reduced the fees to veterans on our loan programs to encourage them to seek access to capital through our program.

So we are very focused on assisting the veterans transitioning to a successful life back home.

Mr. YODER. Well, I just wanted to highlight the efforts you are making there and continue to encourage you and to support anything we can do to really connect these veterans as they come back home. We have job fairs in my district where we link up businesses with folks who are looking for work every so often. We have the first hour just for veterans.

So we want to make sure these folks on are the front lines for us overseas; they ought to be first in line when it comes to getting a job when they come home. So I appreciate your efforts in that regard.

Ms. MARKOWITZ. Thank you, Congressman.

Mr. YODER. Thank you.

Mr. CRENSHAW. Just to follow up on that, this Boots to Business program. I think it was started in 2012, and I think it is important to highlight.

Can you tell us, for instance, do you know how many veterans have been through that program? How many you expect to go through it this year? How do you gauge the success of that program? Do you try to follow through? Not only do they come through your program, but is there a way to keep track of how many actually go out and actually start a business?

Talk a little bit about who goes through it, how they go through it, and how you follow up and measure the success of the program.

Ms. MARKOWITZ. Okay. Thank you, Chairman Crenshaw.

I know that we essentially show the video around entrepreneurship to everybody. And then there is a subset you know, that take it further. I don't have the details on those numbers and I don't have the details on the processes around tracking outcome data, but we can certainly get that to you.

Mr. CRENSHAW. I would be interested to see if we could really track the follow through. I think it is a tremendous program and we ought to emphasize it, and if we can point to success, we could make it grow even stronger.

Ms. MARKOWITZ. Thank you.

Mr. CRENSHAW. Anybody else have another question?

We are joined by Mr. Diaz-Balart. I thank him for being here.

I know that there are many different subcommittee hearings going on at one time, and it is hard to get everybody in the same room at the same time.

But I thank the members for being here.

Thank you very much for your service. It is pleasant every now and then to have some agency testify and talk about the good things that are going on and we appreciate the work that you do.

So thank you very much, and this meeting is adjourned.

Ms. MARKOWITZ. Thank you.

Financial Services and General Government Subcommittee
Hearing on the Small Business Administration FY2015 Budget

Questions for the Record Submitted by Chairman Ander Crenshaw

BusinessUSA.gov/Overlap with other Federal Agencies

The SBA's fiscal year 2015 request is asking for \$6 million to support the BusinessUSA.gov website. The SBA has already spent \$12 million on the website, not including the additional \$6 million in your request for fiscal year 2015.

This is a lot of money to spend on a website. As we have found out in some of our other agencies, it is easy to spend lots of money on information technology programs—like websites. This committee is concerned with whether you are spending the money efficiently and what exactly you are getting for the cost.

Question: What is the total expected cost for the development of BusinessUSA.gov?

Answer:

Fiscal Year	Amount (in millions)	Vehicle
2012	0.9	IAA w/Commerce
2013	2.9	IAA w/Commerce
2014	3.0	Direct and IAA

To date (FY2012 & FY2013), \$3.8M has been expended on BusinessUSA (BUSU). These funds were used on early stage start-up and technical development costs, including hosting, security and other requirements necessary to “stand up” a new cross-cutting, multi-channel federal customer service platform including a website. The current budget of \$3M will move the project into its 3rd year with a majority of the investment directed to technical development of enhanced capabilities of the website, more customized integration with other federal agencies, and a modest staffing level to support the growing portfolio of federal agencies that are seeing and requesting the linkage and leverage that the BusinessUSA site can offer to their own individual web presence to their customers.

Question: How much does the SBA expect to ask for every year to maintain the website?

Your FY 15 request describes the increase as being to “further enhance the customer service experience” by “incorporative web-responsive design that will make the layout more user friendly”.

Answer: We expect the \$6M investment for SBA's FY15 commitment to get us to a “steady state” of technical development. However, as with any technology project, a portion of these funds will be set aside for maintenance, while still making a significant investment in new

capabilities of the website – driven by customer feedback and demand. To ensure continued support and service alignment, the BusinessUSA core staff will continue to vigorously engage other federal agency partners through mechanisms including the BUSA interagency Steering and Executive Committees, user – subject matter expert groups, and one-on-one “customer relationship management” activities.

We anticipate an annual ongoing cost, which supports the following categories of services to maintain and grow BusinessUSA.

Operations, Technology, & Marketing	Annual
Steady State - Maintenance (O&M); R&D - Enhancements	\$5.0M

Question: Your FY 15 request describes the increase as being to “further enhance the customer service experience” by “incorporative web-responsive design that will make the layout more user friendly”. What does this actually mean in a tangible sense?

Answer: We see BusinessUSA as a one stop shop for engagement with the public on opportunities for their businesses inside the government. Today, there is a fragmented environment of programs spread across many different agencies and BusinessUSA will correct that.

Question: What would American taxpayers and American small businesses actually get from this requested increase?

Answer: BusinessUSA makes it easier for American businesses and entrepreneurs to access the government services and information they need to start, grow and prosper. Created for speed and ease of use by U.S. businesses and citizens, BusinessUSA is a multichannel service that combines thousands of business-relevant tools and resources from federal, state and local government across the U.S., along with articles, guided search tools, etc. to quickly connect customers to the information they seek.

Question: Why is BusinessUSA different than existing federal agency websites?

Answer: BUSA currently has:

1. Website Tools, a Zip Code Smart Tool, a Contact Center with Interactive Voice Response, guided questionnaires and “wizards” that provide a great level of personalization, all of which help users easily locate the most relevant – and popular – components of the website.
2. Aggregated subject matter expertise from across multiple Agency resources, into one access point, eliminating the need for customers to search many “stove piped” Agency websites for their specific business needs.

Explore Exporting and Find Opportunities (sell to the government)

Select 2015 Enhancements:

1. Local business “Smart Tools” will allow visitors to enter information that directs them to SBA resources in their local area. Specifically, zip code search, “request an appointment” at a nearby SBA District Office, and a Training Portal that directs customers to hundreds of classes on the web and in their area.
2. Businesses will get access to BUSA through mobile apps, fulfilling the FDS goal.
3. Development of MyUSA – a transactional service for customers that is uniquely customized for their specific needs; improved web tracking and search capability to allow us to highlight relevant information to the customer based on past customer inquiries.

Question: Are other agencies contributing to the cost of this website?

Answer: Yes. When BusinessUSA is approached by an agency to develop very specific content for their customers, Agencies have used the IAA instrument on a very limited basis to fund that specific development cost.

Question: How is SBA ensuring that its programs do not overlap with other Federal agency programs that promote economic development (e.g., the U.S. Economic Development Agency, etc.)?

Answer: BusinessUSA does not duplicate program knowledge and expertise at the Agency level. BUSA relies on the data and content from subject matter experts at those Agencies to develop information that is then fed to BusinessUSA for repackaging for our business consumer.

BusinessUSA is a broker and repackager of information; and therefore does not duplicate any program or service offered by the individual agencies. A partnership with BusinessUSA will increase customer flow back to the provider agencies.

BusinessUSA has established a robust performance analysis rubric that captures information about the numbers and types of customers, where they come from, preferred channels of communication with the Federal Government, satisfaction with the service and resources provided, the information that they are seeking and whether they were able to obtain it, and many other items. This is information we can provide back to the partnering Agency to help them learn more about their customers, gaps in information that their customers are seeking, etc.

“True” Small Businesses

There seems to be a lack of lending above the microloan level of \$50,000, and under \$350,000. These loans have been decreasing in volume since 2007. I have heard that it is easier to get a \$1 million SBA loan than a \$100,000 loan because it’s the same amount of work for banks to make both loans, and they would rather make a higher loan with a higher commission.

I see that SBA is proposing to continue to waive upfront fees on certain loans and some loans to veterans, but there is still a lack of lending in this mid-range loan level.

Question: How can you account for the lack of loans within this range?

Question: Do banks need more incentives to give these loans to small businesses?

Question: What is SBA doing to make these loans more palatable to banks?

Answer: We understand from some of our outreach efforts that many banks are reluctant to make small-dollar loans because the costs associated with processing them is often the same as the costs of processing larger loans. To that end, SBA continues to seek ways to improve our loan delivery methods. The Agency has current initiatives to streamline the loan application process for potential borrowers, and our loan policies are continuously being reviewed to remove barriers and to promote job creation and retention. Additionally, SBA has created the Community Advantage Pilot Loan Program which utilizes mission-based lender participants that have proven to be more effective in delivering capital to underserved communities, which over-index in SBA small-dollar loans.

Office of Inspector General (OIG) Concerns

The most recent SBA Inspector General report on serious management and performance challenges facing the SBA highlighted some troubling risks within the SBA that I hope the agency is taking seriously and working to correct as quickly as possible.

One of the risks highlighted was the weaknesses in the SBA's information systems security controls. The IG report stated that the SBA has six open recommendations 682 days past their original target corrective action date. This includes vulnerabilities like the need for establishing baseline configurations of SBA information technology systems. Some vulnerabilities are statutory requirements under the Federal Information Security Management Act of 2012. With the amount of personally identifiable information within SBA systems, this is a serious issue not to be taken lightly.

Question: The SBA is 682 days past the original target corrective date for IT security vulnerabilities—how is this possible?

Question: How is this an acceptable response time to address critical IG recommendations?

Question: What is the status of SBA corrective action on these items?

Answer: The SBA developed a continuous monitoring strategy to support organization-wide risk management that includes comprehensive processes that frame, assess, respond to and *monitor* risk on an ongoing basis. SBA has evaluated its threats and associated vulnerabilities to determine the overall risks associated with operating its systems. These risks are documented and actively managed through the corrective action plans, also referred to as Plan of Actions and Milestones (POA&M). In recent months, the SBA has secured funding, procured and implemented the needed tools to remediate the risks and to establish a healthy operating environment. These tools include configuration, patch, asset management, and network access controls; the main contributors to the need for on-going POA&Ms related to these issues. SBA has improvement in these areas since implementing the tools.

Question: The IG also noted in its report that 66 percent of loan dollars guaranteed by the SBA were made by lenders of which the SBA had limited oversight. Since 2001, the SBA has made progress in this area, but the IG report cited that the SBA must implement and demonstrate the effectiveness of the corrective action process for monitoring and verifying lenders.

This seems like an essential part of following up on the IG recommendations: in order to have effective lender oversight, the SBA must be able to know whether the corrective actions it instituted actually work. We know that the performance of SBA loans is improving because the subsidy rates are declining.

Question: What is the dollar amount of loans at-risk because of poor oversight?

Answer: The SBA Inspector General (IG) stated in its FY 2014 Report on the Most Serious Management Challenges Facing the Small Business Administration (the Report) that in FY 2011 66 percent of loan dollars guaranteed by the SBA were made using delegated authorities with limited oversight (i.e., that these lenders make SBA loans without prior SBA review of the loan origination). Through the delegated authority programs, SBA has been able to leverage the skills of our private sector partners to greatly expand access to capital to America's small businesses. The IG did not state and SBA does not believe that SBA's oversight of delegated lenders was "poor". In fact, the Report noted that SBA has made "significant progress" since 2001 in oversight of its lending participants. Specifically, the IG Report noted that "[i]n FY 2013, the SBA (1) developed risk profiles and lender performance thresholds, (2) developed a Select Analytical Review process to allow for virtual risk-based reviews, (3) updated its lender risk rating model to better stratify and predict risk, and (4) conducted test reviews under the new risk-based review protocol. These efforts have demonstrated that on-site reviews are now conducted of the highest risk lending participants based on expanded selection criteria." Together, these activities comprise a comprehensive oversight framework earning SBA a "Green", or fully implemented, status for four out of six lender oversight IG recommended actions. SBA has also made significant progress on the IG's fifth and sixth lender oversight recommendations covering the corrective action process for 7(a) and 504 loan programs, respectively. This progress is detailed below under Lender Oversight Question #2.

In managing SBA portfolio dollar risk, SBA retained Dun & Bradstreet, a private sector leader in risk rating technology, and instituted the Loan and Lender Monitoring System (LLMS). That system was reviewed by the Government Accountability Office (GAO). GAO found the system was generally successful in distinguishing between higher and lower risk lenders. Through LLMS, SBA calculates risk ratings for all SBA loan dollars and all SBA lenders. In addition, SBA conducts on-site reviews of our highest risk and largest dollar volume lenders. Very recently SBA redesigned those reviews to incorporate new technologies, additional performance data and performance benchmarks to better focus its risk-based monitoring. These changes resulted in two evaluation methodologies that frame SBA's risk-based review protocols: i) PARRIS for the 7(a) loan program and ii) SMART for the 504 program.

Under the new framework as being tested, SBA may the conduct one or more of the following levels of review:

- i) Lender Profile Assessments (a data driven virtual review of lender's performance against key benchmarked risk metrics which produces a score);
- ii) Analytical Reviews (an analytical review of a lender's Lender Profile Assessment metrics);
- iii) Targeted Reviews (narrow but deeper reviews generally triggered by outlier metrics identified in analytical reviews); and
- iv) Full Reviews (comprehensive exams of each PARRiS component).

SBA conducts Lender Profile Assessments for all SBA lenders on a quarterly basis. SBA performs the latter three types/levels of review on SBA's higher risk and higher volume lenders based on the Lender Profile Assessments or other risk findings. Additional details on the PARRiS and SMART protocols are included below in SBA's response to the question, "How is SBA monitoring lenders so that American taxpayer funds are not wasted due to lack of appropriate oversight?"

Finally, SBA performs detailed delegated authority reviews at least every two years of each delegated authority lender. These reviews include an evaluation of the lender's performance, program compliance, and regulatory matters if any, and form the basis for SBA's decision to renew delegated authorities.

In sum, SBA's oversight activities are comprehensive and promote strong and effective lender oversight of SBA's loan portfolio. In so doing, SBA mitigates the dollar risk associated with the SBA loan and delegated authority programs.

Question: What is the SBA doing to address this important recommendation?

Answer: SBA's Office of Credit Risk Management (OCRM) is developing an automated management tool to ensure timely follow-up of lender corrective actions. The new tool is supported by a Corrective Action database monitoring system to manage lender corrective action findings and follow-up activity. The database tool will allow OCRM analysts to enter new review findings; to document the corrective actions that lenders report they have taken to correct findings; and to monitor lender resolutions to recommended findings. The database system also includes an automatic tickler alert system to reinforce the corrective action follow-up process. Lenders that do not adequately respond or implement corrective actions as required, in a timely and efficient manner may be subject to increased supervision and enforcement actions.

Question: How is the SBA monitoring lenders so that American taxpayer funds are not wasted due to lack of appropriate oversight?

Answer: SBA understands the importance of lender oversight in administering an effective 7(a) and 504 loan program. SBA has made significant progress in instituting a comprehensive credit risk management program for its business loan programs. All lenders participating in the 7(a) and 504 loan programs are continually assessed and risk-rated to ensure that those considered to represent the highest risk receive the highest level of Agency attention.

SBA monitors all 7(a) and 504 lenders through the LLMS system. This system reports on current, historical, and projected portfolio performance. In addition, SBA has developed and is testing new lender risk-based review protocols using the PARRiS and SMART methodologies and rating guides along with other lender information, to determine the scope of lender reviews. The PARRiS and SMART composite risk measures provide an analytical framework to identify lender weakness in terms of their risk to SBA. Under the PARRiS framework for example, the lender portfolio Performance component examines key lender performance metrics such as lender's 12-month and 5-year default rates and agency losses from that particular lender. The Asset Management component examines the ability of the lender to actively manage loans through the origination, servicing, and resolution process. The Regulatory Compliance component reviews the lender's compliance with SBA's Loan Program Requirements. In the Risk Management component, SBA evaluates a Lender's use of an effective governance model to identify, understand and mitigate risk exposure to the SBA. The Special Items component includes any internal or external factor that may increase risk to SBA and currently includes items such as risk impacts of mergers or acquisitions of other SBA loan portfolios, industry concentration rates, and secondary market sales rates. SBA's SMART protocol for 504 program Certified Development Companies examines: Solvency; Management and Governance; Asset Quality and Servicing; Regulatory Compliance; and Technical Issues and Mission, in a similar manner. OCRM has developed and is testing benchmarks for each of the component metrics contained in PARRiS/SMART that quantify and stratify SBA's risk appetite. Comparing component metrics to benchmarks helps to identify areas for further review and, ultimately, review findings that require corrective action. See also response to the above question, "What is the dollar amount of loans at-risk because of poor oversight?"

PARRiS/SMART protocols incorporate many of the recommendations made by SBA's OIG and GAO. Under the PARRiS review protocol, a 7(a) lender pays the costs of each level of review triggered. This fee structure better apportions oversight costs to those lenders that create greater risk. SBA is currently in the process of procuring new contractors to assist SBA in completing the testing and implementation of the new review protocols.

OCRM has created a Supervision and Enforcement unit headed by a former SBA IG Director of Credit Programs Oversight. She has created and is further developing a lender supervision and enforcement practice that identifies high risk areas and corresponding lenders. SBA undertook approximately 24 lender supervision and enforcement actions in FY 2013 addressing such issues as failure to file financial reports, 1502 reporting, and other material deficiencies in SBA Loan Program Requirements. SBA has also suspended or debarred approximately 27 parties, including but not limited to, actions against loan agents and borrowers.

Finally, SBA has developed and implemented a regulatory framework to support credit risk management, including the promulgation of lender oversight/enforcement regulations that establish the grounds and procedures for lender supervision and enforcement, lender oversight Delegations of Authority, Lender Risk Rating Standards, and Standard Operating Procedures for lender supervision/enforcement and reviews/examinations.

Question: The IG report also mentioned that in December 2011 the SBA awarded a contract to develop and deploy a new information technology system by December 2012 to assist the SBA in monitoring 8(a) program participants. As of the publication of the report at the end of last year, the system has still not been deployed and “its delivery date and deliverables are undetermined at this time”.

This concerns me because, as you know, agencies are expected to meet 8(a) contracting goals each year, and so 8(a) contractors have a competitive advantage in getting Federal contracts. These contracts should be going to those who actually qualify for the program.

Question: What is the status of the 8(a) monitoring system?

Answer: The first phase of the system will support business processes for the 8(a) Business Development (BD) program. The first phase is being tested by the end-user community, the SBA Office of Business Development, and the SBA Office of the Chief Information Officer.

Question: Can you tell the Committee how much was spent on this contract?

Answer: SBA has awarded \$1,905,546.05 for the development and testing work associated with this system.

Question: Do you believe this is an effective use of taxpayer funds?

Answer: The fully implemented system will provide good value for taxpayer funds because it will streamline and automate the business processes associated with applying, participating, and exiting from SBA’s 8(a) BD program, which should also improve SBA’s ability to eliminate fraud, waste, and abuse from the 8(a) BD program.

Question: What is the SBA doing to fix and deploy the 8(a) monitoring system?

Answer: The system is being tested by the user community, SBA’s Office of Business Development, and SBA’s Office of the Chief Information Officer. After the tests are run, the contractor will implement fixes and SBA will then determine when it can deploy the system.

Question: How much fraud is in the 8(a) program?

Answer: SBA takes administrative and programmatic actions whenever it identifies potential fraud. For example, during Fiscal Year (FY) 2013, SBA initiated the following administrative enforcement actions: (1) SBA suspended 8(a) BD program participants, thus excluding them from receiving any future Federal Government contract or grant awards; and (2) SBA debarred 8(a) BD program participants, thus excluding them from receiving any future Federal Government contract or grant awards. Additionally, in FY 2013, SBA initiated the following programmatic enforcement actions: (1) SBA suspended the 8(a) BD program participation; and (2) SBA terminated the 8(a) BD program participation.

Question: Approximately how many 8(a) contractors get 8(a) contracts that are not small or disadvantaged?

Answer: According to the Federal Acquisition Regulation (FAR) and SBA's 8(a) BD program regulations, each offeror for an 8(a) BD contract must represent that it satisfies the 8(a) BD program eligibility requirements and the small business size requirements in order to receive the award. SBA performs an eligibility determination in connection with each 8(a) BD program application that it receives. Furthermore, the 8(a) BD program performs an annual eligibility review of each program participant. Finally, SBA takes programmatic actions such as suspension and termination of 8(a) BD program participation when it identifies business concerns that no longer satisfy its program eligibility requirements.

Boots to Business

I am a strong supporter of any program that helps veterans transition to civilian life. I am interested in the Boots to Business program that was started in 2012. I understand this program is co-located on bases and is offered as a component of the Department of Defense's Transition Assistance Program (TAP).

Question: How many veterans went through the program last year?

Answer: In 2013 (Calendar Year), 6,120 TSMs matriculated through the Entrepreneurship track of the Transition Assistance Program on 140 installations in the U.S. This is a two-day "introduction to entrepreneurship" course. 559 TSMs went on to complete the eight week online course "foundations of entrepreneurship" course which combined with the 2-day course is known as "Boots to Business". We anticipate much higher enrollment with the expansion of the program; the 8-week course maintained a waitlist of over 100 TSMs the entire year a dynamic which caused many interested service members to forgo registering. This has been rectified with FY14 funding.

Question: How many are you expecting this year?

Answer: We expect between 12,000-15,000 to matriculate through the Entrepreneurship Track of TAP in 2014, which will include addressing for the first time service members transitioning at overseas installations. We expect 1,500-2,000 TSMs to follow on to the 8 week online course lead by Institute of Veterans and Military Families at Syracuse University and including instructors from a consortium of 14 top universities, such as UCLA, Texas A&M, Cornell, Florida State, and Purdue.

Question: How does the SBA measure success in this program?

Answer: SBA tracks all program throughput demographics such as total participants, rank, ethnicity, and gender. We track the graduation rate for the eight week course. With the FY14 appropriation we are putting infrastructure and methodologies in place to track long term outcomes (e.g., number of new business starts by program graduates).

Question: Are you only tracking who went through the program, or is SBA following through with these service members to see how many are successful in actually launching or growing a business?

Answer: With the FY14 appropriation, we are putting infrastructure and methodologies in place to track long-term outcomes (e.g., number of new business starts by program graduates). We are working with SBA's Office of Entrepreneurial Development, the relevant working groups of the Interagency Veterans Employment Initiative, SBA Resource Partners, and our B2B grantee Syracuse University to develop an integrated approach to measuring long-term outcomes.

Question: How is this program unique from other governmental programs targeting veterans?

Answer: There is no other government program that provides entrepreneurship training to transitioning service members.

Information Technology /Data Collection

The Inspector General's management report mentioned that SBA was still having trouble with procurement, specifically information technology procurement. We have seen with other agencies that it is easy to spend lots of money on IT, and not get much for it.

Question: What is the SBA doing to update its information technology systems?

Answer: SBA has a robust process to access all new possible updates to our information technology systems. This process includes conducting an 1)analysis, 2)design, 3) budget/acquisition assessment, 4)deployment, and 5)post-implementation review. SBA is updating our existing infrastructure by implementing the following projects:

- VoIP – SBA has deployed VoIP in multiple district offices (e.g. Detroit, Birmingham, Denver, and Baltimore) and plan to implement throughout the entire agency. This will replace the antiquated PBX system currently in use.
- Wireless – SBA has installed a wireless network at HQ and the Atlanta office, with plans to implement throughout the agency.
- IaaS – Recently awarded a contract with Accellion to provide enterprise-class secure file sharing.

Question: Is the SBA working on the procurement issues outlined in the IG report?

Answer: As a result of the IG report, SBA's Acquisition Division, in conjunction with the Office of the Chief Information Officer (OCIO) has been working to resolve each of the three contracting issues identified by the IG in their report. Specifically, the IG made three recommendations regarding the contracting process and roles and responsibilities. Each of these recommendations has been implemented, as described below:

- A requirements analysis, in addition to a cost estimate, was conducted to determine developmental needs as a means to achieve the objectives of the final system.

- As a result of the requirements analysis and cost estimate, a fixed price contract was awarded January 2014.
- A Contracting Officer Representative (COR) from OCIO has been appointed by the contracting officer. Part of the COR's responsibility is to provide oversight of contract performance and to ensure that oversight functions are performed only by Government employees.

Question: Will this eventually lead to better data collection?

Answer: The SBA believes that by procuring better technological systems it will be able to collect better data. Better data will give us an opportunity to gain better understanding of the programs we run and how to make them more efficient.

More modern systems will also make the interaction between our resource partners stronger. It is imperative that the SBA collect good data and be able to cohesively understand the environments we are working in.

Question: If a small business came into any of the Entrepreneurial Development Programs and had the same IT and procurement issues that the SBA has, what would the SBA say to them?

Question: I understand the SBA loan management system is in the middle of being updated. What is the status of this update?

Answer: In September 2010, SBA requested authority from the Office of Management and Budget (OMB) Financial Systems Advisory Board (FSAB) to implement the Loan Management and Accounting System (LMAS) Incremental Improvement Projects (IIPs) approach. OMB FSAB approved the projects in January 2011 to accelerate the agency modernization of the loan systems.

The LMAS IIPs were designed to transition the agency to a more sustainable and platform independent infrastructure by:

- Moving the agency to a standard platform (SUN SOLARIS/ORACLE)
- Increasing use of the web platform
- Decreasing dependency on platform dependent mainframe solutions, which are costly to maintain

SBA has completed retirement/modernization of 480 legacy screens and subsystems by migrating financial system user interfaces to the web environment to reduce the agency's footprint on the mainframe. The migration of the screens to a web environment has resulted in:

- 85% of 504 and 90% of 7(a) loan transactions are now conducted over the web
- All loans (SBIC is the only program not using the web) are originated and serviced on the web in real time.
 - Servicing functions that are now conducted on the web include Litigation, Liquidation, Collateral Purchase, Collateral Sale, Disbursement, Deferment, Loan

Workout, UCC Filing, Federal Records, Disaster Origination, and Disaster Servicing.

- There is increased transparency as lenders are now able to see their loan portfolio as SBA sees it. The web environment allows lenders to access their loans.
- There is a reduction in mainframe footprint and the agency has reduced its dependency on a proprietary vendor solution
 - Since July 2011, the agency has moved approximately 200,000 transactions per week from the mainframe to the web environment
 - SBA no longer uses mainframe local printing services

SBA ported and tested COBOL code to a new platform-independent version of COBOL. The platform independent version of COBOL and new real-time interfaces will allow the agency to move its front end and back end solutions to one primary data center with a hot back up site. By having a single data center, SBA will be able to reduce duplicate hosting, hardware, software, and communication costs.

Question: How will this help the SBA make better faster loans, especially during disasters?

Answer: Prior to migrating to the web environment, Disaster loans were originated on the mainframe platform which required waiting for nightly updates to complete an action. The processing time for completing loan applications required waiting for the loans to be processed each night. If there were errors to the loan documentation, there was an additional delay in making those changes.

The web environment facilitates real time loan origination and servicing. Actions on the web platform are made immediately so any changes can be completed in real time.

Question: How will it improve lender oversight?

Answer: The mainframe screens were not designed to perform data validation, conform to business rules, and/or audit actions performed. Loans generated on the mainframe had inconsistent or missing data and there was no audit trail to facilitate quality control. The web environment was designed to ensure that all data adhered to consistent structures. Key data items that are needed for lender oversight are required to complete loan origination and servicing processes. If key data items are missing, the user receives an error.

Critical actions are now auditable. Users are aware that changing data elements can be tracked to them. The increased auditing capability reduces users entering bad information into the system since the system owner can track entries.

The web environment has more controls for improving loan data quality. With the improved data quality and consistency, the SBA lender oversight business functions have better information to analyze for making lender oversight decisions.

Questions for the Record Submitted by Congresswoman Jaime Herrera Beutler

Small Business Opportunity Act

In the past two years, Congress directed the SBA to make 12 changes to its government contracting programs – many of which are overdue by a year. One of these changes includes provisions from my bill, the *Small Business Opportunity Act*, which was rolled into the NDAA for FY 13. Yet, not a single one of those changes has been made but the SBA requests \$39 million for its own entrepreneurial outreach efforts.

The SBA was required to issue new guidelines for agency small business contracting:

- File a report on why agencies have not met their contracting goals (an annual requirement);
 - **Answer:** After SBA issues the scorecard, SBA will then forward all of the required reports to Congress for FY 2013.
- Promulgate regulations to improve the mentor-protégé program;
 - **Answer:** A proposed rule was drafted based on the Jobs Act of 2010. After the NDAA of 2013, the proposed rule had to be altered to accommodate a program for all small businesses. The proposed rule is in internal clearance and will be submitted to OMB for interagency review very soon.
- Issue rules to permit more teaming arrangements through modification of subcontracting limitations;
 - **Answer:** The proposed rule has been cleared within the agency and will be submitted to OMB soon.
- Adjust its databases to identify large businesses misclassified as small;
 - **Answer:** SBA issued a final rule on size and status integrity on June 28, 2013. 78 Fed. Reg. 38811 (2013). The General Services Administration, however, is the agency “owner” of major federal procurement databases, including the Federal Procurement Data System – Next Generation (FPDS-NG), and the System for Award Management (SAM) and is therefore the agency that would need to make any necessary adjustments to these databases.
- Establish a website for large businesses to post subcontracting opportunities for small businesses;
 - **Answer:** Sub-Net is available for large businesses to post subcontracting opportunities.
- Promulgate regulations creating a safe harbor for small businesses who make a good faith effort to comply with the complex agency size standard rules;
 - **Answer:** A proposed rule will be published in the Federal Register by the end of June 2014.
- Issue regulations on its authority to suspend or debar businesses;
 - **Answer:** SBA has regulations on its authority to suspend or debar contractors in all of its programs. See 13 CFR 121.109(e)(1), 13 CFR 124.4(d), 13 CFR

124.303(a)(16), 13 CFR 124.520(h)(2), 13 CFR 124.603, 13 CFR 124.1015, 125.29(e)(1); 126.900(e)(1); 127.700(e)(1). For SBA specific regulations with regard to grants and other non-procurement transactions, those regulations have been promulgated in 2 CFR part 2700.

- Issue a SOP on how the agency will conduct suspension and debarment proceedings.
 - **Answer:** SBA's Suspension and Debarment Official for Grants and Procurements follows the required procedures of the FAR for procurement related matters and the procedures in 2 CFR parts 180 and 2700 for non-procurement related matters. These regulations provide the procedures for how a firm or individual is debarred, and what if any factors should be considered by the Suspension and Debarment Official during the decision making process. For procedures related to referrals and other intra-agency communication and coordination relating to contracting, SBA has already updated SOP 00 11 2, "Acquisition Standard." Pages 29-30 contain the procedures for referrals to SBA's Suspension and Debarment official relating to contracts.

Question: None of these requirements have been executed by the SBA and some are more than a year behind schedule. There is no mention of the agency's effort to comply with these statutory mandates in its budget justification.

When can Congress expect that the SBA will comply with statutory directives and make those changes in its government contracting programs?

Answer: See above.

Office of Natural Resource Sales Vacancies

According to the SBA's website, the Portland, OR industrial specialist for the Office of Natural Resource Sales is vacant. This office is the closest to my district in Southwest Washington and could best serve constituents and small businesses that would qualify for set aside timber sales.

Question: Do you have sufficient funds to fill an Industrial Specialist in the Portland, OR office?

Answer: The SBA currently has 3 Specialists assigned to monitor and oversee Natural Resource Sales Program activities across all forest lands and areas under the jurisdiction of the Bureau of Land Management. While no Specialist is located in Portland, William Bramwell, our Industrial Specialist in Seattle, WA, has responsibility for monitoring timber sale activity in Oregon. He periodically visits the Portland area and attends conferences and meetings with small businesses, government, and industry, as needed and/or requested. Along with SBA's Area VI Director, James Gambardella, Mr. Bramwell is available and responsive to the needs of the small mills in the Portland area.

Question: If you do have sufficient funds, why is the position not filled and when can I expect it to be filled?

Question: If not, then why is the SBA recommending \$39 million to fund its own initiatives in entrepreneurial outreach while not filling a critical role that will help small mills meet their needs for timber?

Answer: In response to general budget reductions and sequestration cuts, staffing at the SBA has been reduced across all offices. Hiring authorizations for vacant positions were prioritized by a centralized senior management committee.

It is critical in today's economy that we continue to support job creation where it has the greatest opportunity – among our nation's 28 million small businesses. In FY 2014 the SBA will continue to target investment in small businesses by providing more tools to help startups and existing businesses grow and create jobs while increasing SBA's efficiency and effectiveness.

Timber Sales

The federal government sells large quantities of natural resources and surplus real and personal property authorized for sale in accordance with public law. (Timber and Related Forest Products). SBA and the sales agencies jointly set aside timber sales for bidding by small concerns when it appears that under open sales small business would not obtain its fair share.

Although USDA has made operational changes to how it recalculates percentages of timber set aside for small business, it appears that the last time the memorandum of understanding between SBA and USDA was revised occurred in 1990.

Note: The original MOU was filed in 1958 (BLM has one for disposal of property but that appears to have been signed in 1959 and not subsequently updated) and then again modified in 1971 (of which significant litigation occurred in *Duke City Lumber v. Butz*).

Question: Given the Forest Service emphasis on conservation contracts rather than on timber sales, what actions has the SBA taken, either with respect to renegotiating the memorandum of understanding with the Forest Service or other actions, to ensure that small businesses receive their "fair share of total sales of Government property" as quoted in section 15 of the Small Business Act?

Question: If the SBA is not taking any such action, why is it not protecting the interests of small timber mills?

Answer: The Forest Service (FS) has shifted to forest restoration projects that include timber sales referred to as Stewardship Contracting (goods for services). The company performs restoration work, and timber sales are embedded in the contract. This concept started over 11 years ago as a pilot program, and SBA has tracked these contract awards since its inception. SBA has seen a trend of some FS Market areas only posting stewardship contracts for all their timber sales. The issue with these contracts is that if a small business performs one of these contracts the volume of timber harvested is not counted towards the normal small business timber purchasing, which impacts the share percentages that small business purchases in the future.

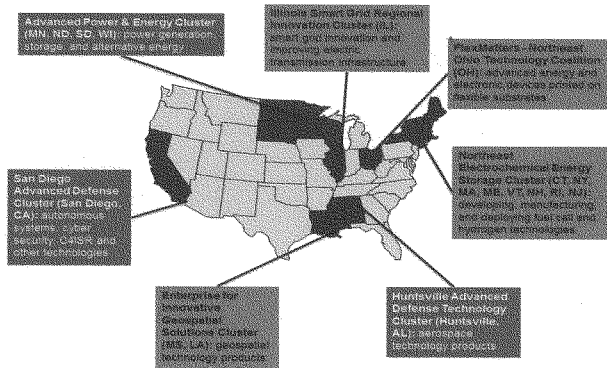
We are working on addressing this issue. SBA is coordinating the drafting of a proposed regulatory change to allow timber volume based on small business stewardship sales to be counted, along with a concurrent update to the FS Handbook which guides timber sales activity.

Questions for the Record Submitted by Ranking Member José Serrano

I understand that SBA awarded 10 SBA Regional Cluster Grants in fiscal year 2013 and is about to issue a report on their progress.

Question: Can you tell us a little about these grantees and the lessons you've learned from their work over the past year?

Answer: In fiscal year 2013, the SBA awarded seven new cluster contracts. Awards went to seven of the ten first generation Regional Innovation Clusters, which are represented in the exhibit below. Industries represented include advanced defense technologies, geospatial, electrochemical storage, flexible electronics, and energy transmission (smart grid).



Source: Optimal Solutions Group, LLC.

Exhibit 1. Map of the 7 clusters funded by SBA's Regional Clusters Initiative. The three clusters with white text and red background are the Advanced Defense Technology (ADT) clusters of the Initiative, while the remaining four with black text and blue background are the Regional Innovation Clusters (RIC).

Examples of SBA's Regional Innovation Clusters:

The Flexible Electronics Cluster operated by NorTech in northeastern Ohio is a prime example of a cluster initiative helping to enhance the region's entrepreneurial ecosystem. In a matchmaking event recently organized by the cluster, two member small businesses were identified by Eaton Corporation, a multi-billion dollar global anchor company in Northeast Ohio, to integrate their novel display technologies into the value chain serving Eaton's advanced energy applications.

Another example of a model RIC is the Illinois Smart Grid Cluster in Chicago; managed by a consortium of partners including the Illinois Institute of Technology and Energy Foundry, the cluster connects an innovation ecosystem of Illinois utilities, corporations, research institutions, federal labs and utilities, and accelerates the growth of smart grid start-ups. Those companies ready-to-scale are connected with mentors, angel and venture investors and “live grid” testing ground for new products and innovations. For example, Intellihot Green Technologies is a small manufacturer of tankless water heater systems for residential and commercial applications, located in Galesburg, IL. The cluster provided one-on-one strategic consulting, introduced them to a mentor organization, the Gas Technology Institute, and connected them to the cluster’s investment fund. The fund made a direct investment which catalyzed about 10X further investment. After only a year of receiving assistance from the cluster, Intellihot expanded their sales channel and witnessed an increase by 247% in their sales, increased its manufacturing capacity and expanded the number of employees by 129%.

Additionally, we have been able to learn from and generate best practices based on the variety of services provided by our Regional Innovation Clusters. Example cluster activities include the Northeast Electrochemical Energy Storage Cluster’s organization of a summit that had more than 70 small businesses from the New England states showcase their products to angel and venture funders, in addition to prospective customers. Another is the San Diego Defense Cluster’s facilitation of a meeting between the International Trade Administration and a small business interested in collaborating with an Israeli firm to design an unmanned helicopter system for India.

The third year of SBA’s Regional Innovation Clusters will soon be published by our independent, third-party evaluator. The report will provide examples of and lessons learned based on clusters’ activities in increasing small businesses’ access to capital, enhancing small businesses’ development or commercialization of new technology, improving small businesses’ marketing strategies, increasing exports, assisting with intellectual-property issues and patent applications and building small businesses’ organizational capacities. Similar to the other evaluation reports, we make the entire report publically available on SBA’s website: http://www.sba.gov/about-sba/sba_initiatives/clusters_initiative/about_the_clusters_initiative

Question: Given the importance of creating jobs in areas where factories and industries have left the community, how is the SBA promoting the Regional Clusters program?

Answer: The Regional Innovation Clusters Program is a significant component of the Agency’s strategy to create jobs in distressed areas. The headquarters staff liaises with SBA district offices, resource partners and regional stakeholders to ensure communities are aware of the portfolio of SBA cluster initiatives and their value to small businesses and regional economies.

Additionally, the SBA prioritizes public relations and press outreach to ensure that the positive outcomes from the program are properly communicated to diverse audiences. Please see the links below for examples of media coverage of our clusters program:

- Entrepreneur.com “A Cluster of Clusters: Where the SBA is Investing in Regional Economies” <http://www.entrepreneur.com/slideshow/225398>

- Brookings: “Regional Innovation Clusters Begin to Add Up”
<http://www.brookings.edu/blogs/up-front/posts/2013/02/27-regional-innovation-clusters-muro>
- Entrepreneur.com “This Kind of Cluster Could Actually Help Your Business”
<http://www.entrepreneur.com/article/227354>
- Brookings: “Economic Cluster Policy Begins to Work”
<http://www.brookings.edu/blogs/the-avenue/posts/2013/07/09-economic-cluster-policy-muro>

On a region-specific level, SBA’s promotion of the clusters program in distressed areas is exemplified through the Huntsville Advance Defense Technology Cluster and the Mississippi Enterprise for Innovative Geospatial Solutions clusters. In the last ten years, both regions have experienced significant reductions in the presence of federal contracting opportunities due to the downsizing of NASA and DOD budgets. Through the use of cluster resources and connections, however, companies are leveraging their unique innovative capacities to seek new opportunities.

Question: What were the effects of sequestration and the government shutdown on the SBA?

Answer: The economic uncertainty created by sequestration prevented small businesses from moving forward by pursuing new opportunities to expand. Under sequestration, there were both fewer federal contracts for small businesses to win and less technical assistance to help small businesses compete for those opportunities. Under Sequestration, SBA was required to cut each of its six accounts by 5 percent. Within each account, we were required to make some tough choices and we took a strategic approach with the goal of maintaining SBA’s core mission. Some of our programs were cut by more than 5 percent and some were cut less. For example, we cut our Clusters Initiative by 26 percent. As you know, sequestration was painful across the board, and it was certainly not good for small business.

In terms of the Federal Government Shutdown, SBA’s 68 District Offices, loan processing centers, and the majority of headquarters was closed for business. We could not make any business loans, provide counseling and technical assistance through our district offices, or offer many of our other services, negatively impacting countless small businesses across the country.

Questions for the Record Submitted by Congressman Mike Quigley

Small Business Development Centers (SBDCs)

SBDCs are made up of a unique collaboration of SBA federal funds, state and local governments, and private sector resources.

In Illinois, SBDCs helped hundreds of business ever year, creating thousands of jobs and generation millions in state and federal tax revenues.

Question: What is SBA planning to do to utilize this resource and maximize their effectiveness?

Answer: SBA has provided \$4,363,431 in federal funding to the Illinois Small Business Development Center (IL SBDC) network for FY14. With these funds, the SBA is encouraging the IL SBDC to use its thirty seven service center locations throughout the state, in collaboration with the SBA District Office in Chicago as well as the SBA Branch Office in Springfield, IL to build upon partnerships with complimentary programs such as the PTACs, MEPs and MBDA Minority Businesses Centers to provide increased customized assistance to small businesses in their market area.

Question: Nationwide, SBDCs helped small firms attract over \$4.4 billion in capital last year. Are your Capital Access personnel coordinating with SBDCs to help keep that capital flowing?

Answer: Yes, our SBDCs and Cap Access personnel work together. This is one of the reasons why the nationwide SBDC network has been successful in obtaining the billions of dollars in capital. The SBA District Offices have specialized staff (those with capital access program knowledge). These District Office employees work directly with the SBDCs within their local markets through the Lead Center hosted by the Illinois state government to hold joint events on all the lending tools available to small firms or aspiring entrepreneurs. Many of these trainings and other similar events are scheduled months in advance and are often incorporated within the SBDC's cooperative agreement with the SBA. These agency employees also train SBDC counselors on a regular basis on SBA loan programs.

Regional Innovation Clusters

SBA is investing in regional clusters throughout the United States that span a variety of industries including energy, manufacturing, agriculture and advanced defense technologies.

In Illinois, Regional Innovation Cluster has sparked some great work helping companies connect with the electrical grid in more efficient ways.

I understand this year that you are requested an additional \$1 million for the cluster imitative, and plan to spend it largely on a "rigorous program evaluation."

Question: Can you tell me a little about the performance you have seen so far and what you will be looking for with this planned program evaluation?

Answer: The U.S. Small Business Administration prioritizes oversight and evaluation in all our programs. As such, we launched a rigorous evaluation using a third party evaluator to ensure tax payer dollars are being used for effective and catalytic programs. Below is a comprehensive list of key findings and performance metrics captured and analyzed by a third-party evaluator.

1. SBA's Clusters Initiative increased small business participation in 10 regional clusters.
 - **Total small business participation in the 10 clusters grew by 380%.** Small business participants grew from 179 at the start of the program to 859 at the end of the second year.
 - Small businesses reported frequent participation in and high satisfaction with cluster events and activities. 80% of small businesses indicated participating at least

occasionally in cluster-sponsored events, and 74% were satisfied or very satisfied with these services and activities.

- Top reasons for small business participation in the clusters: Networking with other cluster participants (80%); access to cluster services (55%); access to government procurement opportunities (49%); access to new markets (domestic and international) (35%); and integration in the industry's supply chain (30%).
2. Cluster participation is associated with more growth in small business jobs, revenue, and payroll.
 - **Total employment in small business participants grew an average of 18% across the clusters in two years.** This figure includes a 13% increase in full-time employment.
 - Nearly all the clusters—9 out of 10—experienced an increase in the average revenue of small business participants, 23% across the clusters in two years.
 - The median payroll (total compensation paid to employees) of small business participants increased by nearly 18% in two years.
 - In two years, 18 new businesses were established, and 72% of them reported that cluster participation was at least slightly influential on their decision.
 3. Clusters helped small businesses enhance their capacity for growth.
 - Access to capital influenced by cluster participation
 - **More than \$66 million in capital in two years through private funding sources, such as loans, venture capital, and angel capital.**
 - **More than \$14 million in early stage investment in two years from federal SBIR and STTR awards.**
 - Access to markets influenced by cluster participation
 - **More than \$807 million in contracts or subcontracts in two years won by small businesses.**
 4. All 10 clusters provided services directly to their small business participants; the majority leveraged SBA resource partners and third-party expertise.
 - **87% of the small businesses surveyed reported that the services and activities provided by the cluster were unique and could not be found elsewhere.**
 - On average, each cluster provided 22 hours of one-on-one counseling to each of its small businesses during the second year of the program. A total of 489 small businesses received one-on-one assistance on topics including contracting and Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) guidance, partnerships and collaborations, business development, and marketing.
 - During the second year of the program, the 10 clusters held a total of 265 group events, including 86 networking events, 80 training and workshop events, and 52 showcase events.

5. More established clusters allocated more funding to the provision of services than to cluster management, and new clusters are following suit.
 - Clusters four years or older **spent an average of 84% of their SBA funding on providing services to their members** rather than on cluster administration during the second year of the program.
 - More recently established clusters caught up with their older counterparts, increasing their use of SBA funding on service provision by 67% during the second year of the program.
6. Cluster participation spurred small business innovation.
 - **Small businesses reported filing 111 patents during the second year of the program (1 per responding small business on average) and have been granted 76 during this same period.**
 - Nearly two-thirds (60%) of small businesses that sought cluster services during the second year of the program reported that they developed new products or services; 42% reported being able to commercialize new technology.
7. Cluster participation spurred supply-chain integration and intra-cluster trading.
 - More than a third (38%) of small businesses reported buying goods and services from one or more cluster participants during the second year of the program
 - 46% of responding small businesses reported that their participation in a cluster resulted in greater participation in their industry supply chain during the second year of the program.

As demonstrated from the above findings, SBA prioritizes the rigorous evaluation of its Regional Innovation Clusters program. The Agency intends to further enhance monitoring and evaluation practices as the program matures. These reports will be made available to committee members upon their completion and will also be posted on the SBA website. The report for Year two of the clusters program can be found at the following link:
<http://www.sba.gov/sites/default/files/files/SBA%20RCI%20Public%20Year%202%20Report%20508%20Compliant%20FINAL.pdf>

Question: Are there plans to support more innovation clusters in the future?

Answer: Based on the incredibly positive outcomes detailed in the first two years of the regional innovation cluster operation, the Office of Entrepreneurial Development plans to incrementally expand the portfolio of clusters across the country while continuing to incubate the success of the existing SBA Regional Innovation Clusters. The office intends to exercise the second option year of its seven existing regional innovation clusters; additionally, the office intends to release a request for proposals to fund three to four additional regional innovation cluster initiatives with a portion of funding from the Consolidated Appropriations Act, 2014, Pub. L. 113-76. On May 1 2014, the SBA released a Sources Sought Notice on FedBizOpps is to perform market research to determine if there are small businesses that are technically able and have sufficient professional experience to lead a these new regional innovation cluster initiatives. The following is a link to the full Sources Sought Notice:
<https://www.fbo.gov/index?s=opportunity&mode=form&id=80fd3802710c2b1f1785ee64352cc1fa&tab=core&tabmode=list&>

REAL 504 Debt Refinancing Program

Question: What is the portfolio performance of existing debt refinanced loans authorized under the 2010 Small Business Act?

Question: How many of those loans have defaulted and what were the dollars involved in any default?

Answer: The 504 debt refinance program authorized under the Small Business Jobs Act of 2010 continues to perform well. 2,731 loans were approved under this program for a total dollar amount of \$2,523,516,000 in 504 loans. To date only 10 loans have defaulted for a total of \$6,721,980 (0.27%).

Question: The REAL 504 Program is by statute an “economic development” program. How does the agency define “economic development”? What are its expectations of the program?

Answer: SBA’s 504 loan program is a long-term financing tool designed to encourage economic development within a community. The 504 Program accomplishes this goal by providing small businesses with long-term, fixed-rate financing to acquire major fixed assets for expansion or modernization. The 504 Program is unique in that our lenders, the Certified Development Companies, are required to demonstrate that their loans support the creation and retention of jobs. SBA expects that the \$7.5 Billion in loan authority requested for FY 2015 will support 82,600 jobs and 6,700 businesses.

TUESDAY, APRIL 8, 2014.

GENERAL SERVICES ADMINISTRATION

WITNESS

DAN TANGHERLINI, ADMINISTRATOR

Mr. CRENSHAW. This meeting will come to order. They are expecting votes around 3:00. We will proceed. I think that there are so many different subcommittees meetings at this time that people may be wandering out. I know I have been to three subcommittee meetings already in this hour. So let's proceed and then we will see what happens. But we want to thank the Administrator Tangherlini. Welcome to the hearing today.

Mr. TANGHERLINI. Thank you.

Mr. CRENSHAW. The General Services Administration is often referred to as the landlord of the federal government, but GSA's mission goes beyond providing office space and managing property. Agencies across the federal government rely on GSA to assist in their procurement and acquisition needs and to deliver effective economical technological solutions. In a time when the budgets are shrinking and resources are scarce, GSA's role is all the more important and we on this committee expect you to be a leader to find savings and drive efficiencies in your own budget.

Only a few years ago, Congress and the American people learned of the terrible abuses and excesses that took place during a time when the General Services Administration was flush with money but short on integrity. You have worked and we appreciate the reforms that you have attempted to implement since joining the agency, but we here in the committee and the American taxpayers need to be convinced that the culture has really changed. For that reason, the committee included several reporting requirements in the 2014 Omnibus Bill regarding training, spending, and bonuses, and we look forward to reviewing those reports.

This subcommittee has pressed GSA to make better use of its existing portfolio of buildings and shrink the federal footprint through reduction in GSA's inventory in leased and owned office space. In the last years, we have seen a reduction in staffing across the federal government, and so you would think that we would see reductions in space requirements as well.

GSA's 2015 request proposes something called zero Net Budget Authority, which would allow GSA to spend up to the level of rent collections that you take from agencies across the federal government. We are a little skeptical of this approach and we want to talk about it. Maybe you should budget for the highest priority projects and not simply match the budget to the level of rent you are collecting because the federal government is your customer and

your job is to be a good steward of tax dollars. If you are collecting more than is needed then maybe you should charge agencies less.

You inherited a mess and I appreciate your efforts to instill a culture of transparency and accountability at GSA and restore the public's trust in the agency. So welcome again, and I appreciate your service and look forward to your testimony. I would like now to recognize the ranking member, Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. I would like also to join you in welcoming the GSA administrator to this very I was going to say warm setting, but actually, the room is cold.

I am going to have call GSA.

General Services Administration provides a spectrum of services to the federal government. It is our government's landlord, architect, facilities manager, procurer, and supplier. GSA's work is incredibly important and I hope that today we can discuss how this subcommittee can best equip the agency to fulfill its mission.

As the nation's landlord, GSA both owns and leases property. I have always been concerned about excess rental properties. Over a period of years, it is less expensive to own property than to lease it. I look forward to discussing with you about the potential to invest in and pursue federal property ownership as a more uniform policy and how your budget seeks to do that.

Another issue of concern for me is a process by which the agency, the size on construction of the Federal Judiciary courthouses. This year's budget request once again includes no funds for courthouse construction. I am sure that this is not what the Federal Judiciary requested, but I will be interested in understanding how you interact with the Judiciary in making these decisions. I encourage a greater level of transparency between GSA and the Judiciary as well as between GSA and the Congress.

Over the last three years, the GSA has been under increased scrutiny. This has resulted in organizational changes as initiated by Congress, specifically restructuring the agency so that administrative costs are separated from program funds. Hopefully your agency is getting acquainted with these changes and what results they are yielding.

GSA's a major actor in ensuring federal efficiency. This is increasingly critical now post-sequester. I look forward to discussing the agency's many responsibilities and how we can work together to accomplish the General Services Administration's goal. I thank you for your service and for appearing before us today. Again, thank you. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you, and now I would like to recognize Mr. Tangherlini. If you would make your written statement part of the record and if you would limit your oral statement to about five minutes, we would appreciate it. But the floor is yours.

Mr. TANGHERLINI. Yes, sir. Thank you, and good afternoon Chairman Crenshaw, Ranking Member Serrano, members of the subcommittee, and staff. Thank you for inviting me to appear before you today. My name is Dan Tangherlini and I am the administrator of the U.S. General Services Administration or GSA. GSA's mission is to deliver the best value in real estate, acquisition, and technology services to the government and the American people.

Before I go any further, I would like to thank the chairman and the ranking member and the committee and the committee staff for their hard work on the Fiscal Year 2014 Consolidated Appropriations Act, especially in the current funding environment.

I also want to take a moment to introduce new leadership at GSA. Denise Turner Roth is GSA's new deputy administrator and Norman Dong is GSA's new commissioner for public buildings. Denise is unable to join us today, but Norman is here and is seated right behind me; they both are dedicated public servants and will help us as we continue on the path to improve the efficiency of GSA.

GSA's Fiscal Year 2015 budget request seeks to build on the progress made in the Fiscal Year 2014 budget. While we have started to address years of backlog repairs, there is still significant work to do. We need to ensure that our buildings can support the work of the government in the 21st century. This budget provides essential funds to support our public infrastructure while also growing our economy, creating jobs, and saving money for the American taxpayer.

Perhaps most importantly for the federal government's real estate inventory, the president's budget requests that the rent agencies pay into the Federal Buildings Fund be reinvested back into our publicly owned buildings. These investments will meet the urgent needs of our partner federal agencies and preserve these public assets for future generations. Every dollar GSA can spend on repairs can save \$4 in potential costs later.

In order to provide much-needed investments in our nation's public infrastructure, GSA's Fiscal Year 2015 budget requests include more than \$1 billion in repair projects. These range from crucial life safety upgrades to full-scale modernizations.

In addition, the budget looks to continue critical investments along the border by providing \$420 million for three border crossings: the Alexandria Bay land port of entry in New York State, the Calexico land port of entry in California, and the San Ysidro land port of entry in southern California. These facilities are vital to our country's security and economy. San Ysidro is a perfect example of this. Every day, 50,000 vehicles and 25,000 pedestrians enter the United States at San Ysidro, making this the busiest border crossing in the world. Using these funds, we would finally complete our work on this important project after 10 years. These improvements would ease traffic throughout the region, promote economic growth, and better equip the Department of Homeland Security to ensure our nation's safety.

Another national security priority in this budget is a \$250 million request to continue our consolidation of DHS at the Saint Elizabeth campus. Consolidations such as this are essential to operating an efficient and effective government. Building on the progress from last year, GSA has again requested \$100 million to continue our work to support our partner agency's efforts to streamline their space.

The Fiscal Year 2015 budget request also includes more than \$240 million in much-needed funds for critical programs at GSA. By supporting the Office of Government-wide Policy and the Office of Citizen Services and Innovation, Innovative Technologies, GSA

will continue to provide our partner agencies in the American public with tools and services that increase the efficiency, effectiveness, and transparency of the federal government.

As I reported to the committee last year, when I came to GSA, we undertook a top to bottom review of the agency. Through that effort, we consolidated major functions of the agency to eliminate redundancy and improve oversight and accountability. GSA continues to consolidate and streamline key administrative service functions to improve efficiency and better align our own internal operations.

These reforms are already reducing costs. GSA has reduced the Working Capital Fund by \$39 million or 5.6 percent. We saved more than \$310 million through efficient spending on printing, advisory services, and IT devices, including \$68 million over two years in travel costs. We have more than 380 full time positions and we have reduced indirect costs by more than \$130 million.

GSA has also seen significant savings through our ongoing programs. We have helped agencies save more than \$300 million through our Strategic Sourcing Initiative, we have cut our lease inventory by 5 million square feet, and we have saved \$193 million in avoided energy costs by improving energy efficiency. We expect further reductions in savings as we move forward and we will continue to keep the committee updated.

The president's budget provides the investment we need to help rebuild our nation's public building infrastructure, ensure that federal agencies can support economic and job growth in communities across the country, and provide vital services to the public. I appreciate all your work on the Fiscal Year 2014 Consolidated Appropriations Act and I want to continue our partnership to make sure this is not an isolated investment, but a foundation for long-term, sound management of our government's infrastructure.

Thank you again for the opportunity to testify before you today and I look forward to any questions you might have.

[The information follows:]

STATEMENT OF
THE HONORABLE DANIEL M. TANGHERLINI
ADMINISTRATOR FOR GENERAL SERVICES ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE

April 8, 2014

Good morning Chairman Crenshaw, Ranking Member Serrano, and Members of the Subcommittee. Thank you for inviting me to appear before you today.

GSA's mission is to deliver the best value in real estate, acquisition, and technology services to the government and the American people. This mission is both wide-ranging and essential to the federal government. However, between Fiscal Years 2011 and 2013, the vital link was broken between rent that GSA collects from agencies and reinvestment in Federal buildings that house those agencies. During that time, GSA received significantly reduced funding, leaving us unable to meet certain expectations of our federal partners and the American people. GSA's inventory of facilities had to forego more than \$2 billion in capital improvements, including major repairs and maintenance, as well as critical additions to the inventory.

Earlier this year, Congress passed and the President signed the Fiscal Year 2014 Consolidated Appropriations Act (P.L. 113-76). I would like to thank the Chairman, Ranking Member and committee staff for their hard work on this legislation, especially in the current funding environment. This legislation represented a positive step forward for our nation and for our economy. Among its many provisions, the Act made available more than \$9.3 billion in funding for GSA to invest in our nation's public building infrastructure, pay rent for our leased buildings, consolidate offices to save money, and upgrade land ports of entry to secure our borders.

Today, I would like to update you on the critical investments GSA is making with the resources made available through the FY 2014 appropriations; highlight the important, common sense investments GSA is requesting as part of the President's FY 2015 budget; and update you on our continuing efforts to become a more effective and efficient agency.

Execution of Fiscal Year 2014 Appropriations –

As I have stressed to you previously, GSA is committed to investing the resources provided in the Fiscal Year 2014 Consolidated Appropriations Act responsibly and expeditiously. FY 2014 was the first year in four fiscal years that GSA had been provided a significant capital budget.

These Appropriations included funding for a number of critical priorities. For instance, GSA and DHS are now beginning work on the next phase of the DHS Consolidation at St. Elizabeths.

With an investment of \$155 million to upgrade the historic Center Building, GSA will continue the joint effort to consolidate DHS into a single campus to reduce outyear real estate costs, reduce duplication in leased space, and enhance mission effectiveness. Additionally, GSA is investing more than \$290 million in border crossing modernization projects that will expand trade and enhance border security, including the San Ysidro Land Port of Entry in California; the Laredo Land Port of Entry in Texas; and the Columbus Land Port of Entry in New Mexico.

GSA also received \$70 million dollars in support of consolidation efforts throughout the government. Through this investment, GSA will save customer agencies \$17 million in annual rent payments, reduce the Federal footprint by 507,000 rentable square feet, and reduce the government's overall leasing costs by more than \$38 million. This represents an aggregate payback of 2-5 years depending on how you want to evaluate the investment. These are the types of common sense investments that we hope to do more of in FY 2015.

Across these efforts, GSA is committed to transparency and responsiveness. As a signal of this commitment, GSA has already provided the reports and spend plans requested in the FY 2014 Appropriations Act, and we will work to continue to meet reporting deadlines moving forward.

GSA's Fiscal Year 2015 Request –

GSA's Fiscal Year 2015 budget request seeks to continue the progress made in FY 2014. While we have begun to address years of unfunded repairs, there is still significant work to do in ensuring that our buildings can support the work of government in the 21st century. The President's Budget seeks to continue the common sense investments necessary to ensure that the nation's public buildings are capable of supporting our Federal partners' missions going forward.

The President's FY15 Budget provides essential funds to support our public infrastructure, while also growing our economy, creating jobs, and saving money for the American taxpayer.

Perhaps most importantly for the federal government's real estate inventory, the President's Budget again requests Zero Net Budget Authority for GSA. This provision would allow GSA to spend at the level of anticipated rent collections – allowing GSA invest the rent it collects from agencies back into our publicly-owned buildings to meet the urgent needs of partner Federal agencies. This is something that any responsible real estate manager in the private sector is able to do, but for the past four fiscal years we have not had the ability to fully reinvest in our inventory.

By restoring this authority, the President's Budget enables us to make important investments in our real estate assets. The longer these issues go unaddressed, the more problematic they become. GSA needs Zero Net Budget Authority to address the problems in our real estate assets in a strategic, timely, and cost-effective manner.

To address these priorities, the FY 2015 request includes more than \$1.25 billion in repair projects. These range from crucial life safety upgrades that will ensure these public buildings are safe and secure for Federal employees and the visiting public, to full-scale modernizations that will preserve utilization of the nation's buildings into the future. For instance, here in Washington, GSA is proposing to invest \$16 million to upgrade the fire alarm system at the Frances Perkins Federal Building. The current system is outdated and does not meet current standards. In Detroit, Michigan, GSA is proposing to continue the modernization of the Theodore Levin U.S. Courthouse. The proposed \$40 million will fund Phase II¹ of this 3-phase project, correcting serious building deficiencies that will ensure Federal agencies' continued use.

The President's Budget request also includes significant new investments in the infrastructure that supports critical agency functions. In particular, the budget looks to continue critical investments along the border by providing \$420 million for three border crossing and inspection projects: the Alexandria Bay Land Port of Entry in New York, the Calexico West Land Port of Entry in California, and the San Ysidro Land Port of Entry in Southern California.

These facilities are vital to our country's security and economy. San Ysidro is a perfect example of this. Every day, 50,000 vehicles and 25,000 pedestrians enter the United States at San Ysidro, making this the busiest border crossing in the world. Using these funds, we would finally complete our work on this important project after 10 years. These improvements would ease traffic throughout the region, promote economic growth for our entire country, and better equip the Department of Homeland Security to ensure our nation's safety.

Additionally, this budget request includes \$251 million to continue our consolidation of DHS at the St. Elizabeths Campus, a national security priority.

Consolidations such as this are essential to operating an efficient and effective government. Building on the progress from last year, GSA has again requested \$100 million to continue our work to support our partner agencies' efforts to streamline their space. As with the funds from FY 2014, GSA hopes to demonstrate the value of investments that reduce the real estate footprint, save agencies money on their rent, and provide quick payback.

The FY 2015 request also includes more than \$240 million in much-needed funds for our appropriated accounts. By supporting critical functions of offices including the Office of Government-wide Policy and the Office of Citizen Services and Innovative Technologies, GSA will continue to provide our partner agencies and the American public with tools and services that increase the efficiency, effectiveness, and transparency of the Federal government.

¹ Phase 1 was funded through the FY 2014 Consolidated Appropriations Act, at \$31 million.

GSA Efficiency and Effectiveness –

As I reported to the Committee last year, GSA continues to consolidate and streamline key administrative service functions to eliminate unnecessary redundancy and better align our own internal operations. Our goal is to enhance and standardize the delivery of IT, HR, financial, and administrative services throughout GSA while increasing transparency and accountability. In FY 2015, GSA is showing a reduction of \$39 million, or 5.6 percent, from the FY 2014 budget in the Working Capital Fund. This reduction is a result of consolidating resources and providing administrative support in a more efficient way, and we expect further reductions as we continue to execute on this effort.

Conclusion –

The President's budget provides the investment we need to help rebuild our nation's infrastructure, ensure that federal agencies can support economic and job growth in communities across the country, and provide vital, high-quality services for the public. I know that with this budget, we can deliver the efficient and effective government that the American people need. At the same time, GSA must continue to improve the efficiency of our own operations so that we can utilize resources in the most effective manner possible.

I appreciate all your work on the Fiscal Year 2014 Consolidated Appropriations Act, and I want to continue our partnership to make sure this is not an isolated investment, but a foundation for long-term, sound management of our government's infrastructure.

Your support is essential to continue positive change and common sense reforms within GSA. Thank you for the opportunity to testify today and I look forward to answering your questions.

Dan M. Tangherlini
Administrator, U.S. General Services Administration

Dan M. Tangherlini was sworn in as Administrator of the U.S. General Services Administration (GSA) on July 5, 2013, following his 15 months of service as the Acting Administrator of GSA. Since joining the agency, he has served a vital role in President Barack Obama's agenda to build a more sustainable, responsible and effective government for the American people. GSA is responsible for improving the government's workplace by managing assets, delivering maximum value in acquisitions, preserving historic property, and implementing technology solutions.



Throughout his career, Mr. Tangherlini has been recognized for fiscal and management leadership. Before joining GSA, Tangherlini was confirmed by the United States Senate in 2009 to serve as Treasury's Assistant Secretary for Management, Chief Financial Officer, and Chief Performance Officer. In these roles, Tangherlini served as the principal policy advisor on the development and execution of the budget and performance plans for Treasury and the internal management of the Treasury and its bureaus. Tangherlini also served as the agency's Director of the Office of Small and Disadvantaged Business Utilization.

From 2006 to 2009, Tangherlini also served as Washington, DC's City Administrator and Deputy Mayor. His responsibilities included managing the day-to-day operations, budget development and performance management of District agencies. Tangherlini also served as the Director of the District of Columbia Department of Transportation (DDOT) from June 2000 to February 2006.

Prior to his appointment as City Administrator, Tangherlini served as the Interim General Manager of the Washington Metropolitan Area Transit Authority. Tangherlini also served the District of Columbia as Chief Financial Officer of the Metropolitan Police Department from November 1998 to May 2000. Before joining the District government, Tangherlini worked in the Policy Office of the U.S. Secretary of Transportation and in a variety of capacities during six years of service with the Office of Management and Budget in the Executive Office of the President.

Tangherlini received his Bachelor's and Master's degrees in Public Policy Studies from the University of Chicago and his Master's degree in Business Administration from The Wharton School of the University of Pennsylvania.

Mr. CRENSHAW. Well, thank you very much. We will start with questions now and we will try to observe the five-minute rule or the lights will go on. That will give everybody a chance to ask a question or two before we have our votes sometime around 3:00.

Let me start by saying that I think between Fiscal Year 2011 and 2013, our allocation was reduced and so we chose to reduce the funding for building projects so we could live within our allocation instead of dramatically reducing staffing for some of the other agencies that we oversee. As you know, in 2014 the Building Fund received an increase of more than \$1 billion, and when you talk about zero Net Budget Authority, I guess that means you spend all the rent that you collect from the federal agencies. We understand you have a long list of projects, both construction and repair, that you think are necessary. For 2015, you are requesting even more funds than you received in the Omnibus so that your spending matches your rent collections.

We understand you want to provide a good level of service for your customers, but when I looked at it, I looked at the long list of projects included for Fiscal Year 2015, and if I am not mistaken, I see that the number one priority for major repairs and alterations is \$7 million for an IRS parking lot. So I just wonder how you prioritize the projects on your list. How did you determine that the parking lot was the highest priority? Can you talk about that?

Mr. TANGHERLINI. No, I appreciate that question because I think it is an incredibly important one. First, very quickly a little bit about the idea of this zero Net Budget Authority. Congress, when it set up the Federal Buildings Fund, tried to bring commercial discipline into the way we manage federal real estate, and so they required that we charge agencies the commercial equivalent of rent so that we actually do a market-based assessment of what the cost of rent is in any jurisdiction. We then received the money as a deposit into the Federal Buildings Fund and then that amount is appropriated out for specific projects. And the idea is like any other real estate business, we would take that money that we collected in rent and we would reinvest it back in the assets.

Now, how we determine the reinvestment, after three years of getting very constrained funding where the rents we were collecting were not going back into the assets, we have actually accrued a number of pretty serious projects. The particular project, the one in Chambliss, Georgia for the parking garage, which was a project that when we asked for the original funding I think about three years ago was something closer to \$3 million. What has happened is it is a great example of if you do not make that initial investment when the problem first crops up, and if you get a little hole in your roof and you do not patch it, more of the roof begins to collapse in. We have gotten to the point where half of the garage is roped off and if we do not make this \$7 million investment, we think we will lose the entire garage. So that is essentially the way we prioritize, and really in this instance, it became an issue of how do we maintain what is left of the asset that we have?

That having been said, there is a long list of projects out there that need to be done. We have worked very closely with each of our regions to try to prioritize the projects and then we have our central office folks really test and stress test the ability of the region

to actually get the project done, can we contract for it, can it happen quickly, and we try to apply some test of our ability to do the project to the priority that the components of the agency assign to it.

We would be happy to walk your staff through the process we use, the systems we use, and the way we have gone back and forth with the regions. We have even held some money in reserve so that they have to, at some level, demonstrate that they can actually deliver great outcomes in order to compete successfully for the funds.

Mr. CRENSHAW. Like for instance, has that parking lot been like that for three years?

Mr. TANGHERLINI. Yes, it has.

Mr. CRENSHAW. Is this the first time it became the number one priority?

Mr. TANGHERLINI. It has been in prior budget requests. I think it got to the top of the list, and I do not know if it was alphabetical or what. I would say that it is a high priority as well as all the other RNA projects are. It is an example of where, if we were able to meet the priority as it develops, we could have probably done it cheaper.

Mr. CRENSHAW. Well, another quick one. The budget requests \$12 million to buy an IRS annex building in Austin, Texas, and you are paying \$1 million rent for it every year. So if you pay \$12 million for it today, then that means it will take you 12 years to recoup your investment. So I just wonder do you look at the function of the building. Do you think it is important to own it as opposed to lease it for now? What goes into that decision to make that a priority?

Mr. TANGHERLINI. No, that also is an excellent point. I think striking the right balance between leasing and owning is incredibly important. I will tell you that that balance may have gotten skewed over the last several years. Our average length of tenancy on a leased building is about 27 years now growing. So if we were to retain our kind of locational position in that place in Austin, Texas, which, in working closely with IRS, we believe that there will be a continued ongoing need for that facility in Austin, Texas. It really makes sense to recognize that even a 12-year payback is not bad. Some of the projects we have and really in the relocation and consolidation activity, we have projects that pay back virtually instantaneously in less than two years. So we are constantly looking at what is the right payback, really whether we think there is a continuing need for the agency to stay there, and what is our exposure? What will happen to that rent when we go back if we are going to renew our tenancy there?

Mr. CRENSHAW. Thank you. Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. Mr. Administrator, since GSA provides so many products and services to so many other agencies, you are in a unique position to talk about the effects of sequestration and the government shutdown. Can you speak to how both affected GSA and how it affected other agencies you work with from your perspective?

Mr. TANGHERLINI. I appreciate the question, Ranking Member Serrano. For GSA directly, the impact was in many ways indirect because our services are provided to other agencies and then agen-

cies, depending on who they were or what they did and what their mission was, they had a different impact from things like the shutdown. Although almost uniformly, people have had some impact of the across the board cuts associated with sequestration.

We have seen two things happen as a result of it. One is that just in general business volumes and things like the Federal Acquisition Service are reduced. Agencies are scrambling to figure out how they are going to close the gaps. Sometimes the choices are not based on outcomes; they are just made on that bottom line number.

At the same time, we have seen then agencies really get increasingly creative and emphatic about finding ways to save money; and so suddenly there are a lot of people who want to talk about consolidating space and are there better ways that they can do acquisition.

That having been said, we felt the impact in terms of the arguments over the right level of funding most acutely in our Federal Buildings Fund where for about three years, we were not getting full access to the rents that we were collecting from the federal agencies. And so we were collecting their rent and so agencies are already constrained from resources. We were collecting the rent, but we were not making the reinvestment back in the facilities. And so that was not doing a lot of great stuff for my relationship with those agencies as we were trying to work with them and figure out how we could address their specific facility needs as well as help them manage through the implications of sequestration and the certainly the shutdowns.

Mr. SERRANO. In dealing with their facility needs, are you still able to help other agencies find savings in their own budgets, whether that be through travel, leases, or commodities purchased through GSA?

Mr. TANGHERLINI. That is really what we have decided should be the main focus of our agency. There are a couple of services we provide directly like facilities. There are some that we provide based on agency choice like acquisition, technology, and fleet management. What we think our job is is to really be the experts in administrative services and come to agencies and give them ideas about how they can save money either working with GSA or doing it themselves. As a result, we have seen agencies increasingly get interested in ways that they can shrink their footprint, that they can reduce their lease cost. We have seen a lot of interest around reducing fleets, a lot of interest in some of the work that we have done around travel and conference management, alternative means of training, and implementing of the latest technology like cloud computing which can save agencies money.

So we are working every day trying to figure out how to get agencies to gain access to some of these best practices that will reduce their cost.

Mr. SERRANO. Coming back a second to the issue which you know I am very much interested in, leasing versus purchasing. Are all federal purchased buildings yours, owned buildings, or is it The Department of the Army, for instance or other people own their own buildings.

Mr. TANGHERLINI. Nothing is easy in this business, right? So we manage about 10 percent of the federal real property. Now, we manage closer to 70 to 75 percent.

Mr. SERRANO. You say you manage or you own?

Mr. TANGHERLINI. Well, of the property we manage, it is about 50 percent leased and 50 percent owned.

Mr. SERRANO. I see.

Mr. TANGHERLINI. We are responsible for about 70, 75 percent of the commercial real estate, the traditional office space. So we are a large player in office space but we are just one of many players in space in general because you have big players like the Department of Agriculture, the Department of Interior, the Department of Energy with their labs, and certainly the Department of Defense is really the big property manager and property owner.

Mr. SERRANO. Right. One last part of that, Mr. Chairman. Why the argument throughout the years, why do people like me have to continuously say let's own our buildings; let's not rent them. It is cheaper to own them than it is to rent them. Why do you think there was always a movement for renting or leasing?

Mr. TANGHERLINI. I think there is a lot to be said about the flexibility that a lease offers and the ability to very quickly go into the market and meet the space needs of an agency. I will say though over time, because of the difficulty of getting the resources together, and in order to buy something or build something you need to get all the resources together necessary to make that investment, because of the difficulty getting all the resources together at the time that you wanted to buy or build it, it has become easier and easier for agencies frankly to get into operating leases to meet whatever space need they have.

We have some interesting long-term data that shows that our ownership trends have been holding constant for the last 20 years but our leasing square footage has been going up. Now, in the last two or three years and I think in a large part because of the work of this committee and a huge focus on this issue on the part of the administration, we have begun to bend the cost curve if you will of leasing and we have reduced the amount of lease space that you will see in the Fiscal Year 2015 budget by about 5 million square feet off of a high of about 200 million square feet of leased space about three years ago.

Mr. SERRANO. Thank you. Thank you, Mr. Chairman.

Mr. CRENSHAW. Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman. Mr. Administrator, good to see you again.

Mr. TANGHERLINI. Nice to see you.

Mr. GRAVES. A few questions about the LEED program and such and I think we have had this conversation before. I would like to get some updates. I know there has been some changes since we last spoke. First, can you maybe share with us how much each year on average is spent by federal agencies to adhere to the lead standards? Is it a measurable amount at this point that you can put your finger on?

Mr. TANGHERLINI. I am going to have to get back to you with specifics about what that is. If it is measurable, we will figure it out and we can get back to you.

Mr. GRAVES. Is it a voluntary or is it required to abide by the standards?

Mr. TANGHERLINI. We have said that as part of a requirement that the Department of Energy has about having energy standards for buildings, we have just issued, as you pointed out, a recommendation to the Secretary of Energy that agencies be able to choose from two competing offerings of certifications.

Mr. GRAVES. Do you see some of the agencies going to another to Green Globes?

Mr. TANGHERLINI. I have already heard indications that a number of agencies are looking at potentially adopting Green Globes as an alternative to LEED because it better matches the way they perform their mission. The way these certification systems work that some are frankly better for certain types of buildings and efforts and some are better for others.

Mr. GRAVES. It seems like with those two, and I appreciate the fact that you are recommending multiple applications. I think that is good. That is very helpful. Do you sense that LEED is the predominant program as to your recommendations? Are most agencies sort of pushed in that direction or is it an open platform in which they really can choose between alternative methods?

Mr. TANGHERLINI. We would hope it is an open platform and we have proposed instructions for how agencies could understand how they might pick one versus another and we encourage agencies to be very thoughtful in choosing. In terms of whether one is more predominant than another is, there was only really one for a good long time, and so there is some incumbency there.

We have personally looked at it at GSA and given our long track record with LEED, we think that it makes sense for us to continue using for at least this period, but we want to look at the emerging competition within this marketplace; we think it is good. We think third party standards in general are good. They are useful for helping people have some way of evaluating whether the investment they are making was actually worthwhile and whether they are getting the results they claim they are going to get from the investment they make.

Mr. GRAVES. Right, and I appreciate that. And that sort of leaves my last question. So it is been just over five years since I guess the voluntary, which is now sort of a requirement I suppose with most of the agencies. Has there been any analysis, cost-benefit analysis, as to the costs they incurred to adhere to these standards versus maybe energy savings?

Mr. TANGHERLINI. I know that is one thing we are very interested in is looking at making sure that the investments we make and in the LEED certification part of the investments we make in making a building more sustainable is actually very small. I would be happy to talk to you or your staff about what that actual relative cost is.

We are very interested in making sure that the investments we make actually yield meaningful life cycle cost benefits and it really gets back to the chairman's point earlier. Look, if we are going to have access to this money, we want to make sure you are spending it in the most productive way possible or else maybe we should not collect it from the agencies to begin with.

Mr. GRAVES. Okay. No, that is good. I would look forward to seeing some of that analysis, and maybe it is just folklore, but that it is much more expensive to adhere to these policies when maybe it is new construction or renovation or upgrading. It would be fascinating to see, in the event that it is more, that there is a savings over time that offsets that additional expense.

Mr. TANGHERLINI. If I could add one more point to that, and this gets a little bit to the conversation I was having with the ranking member. This issue of life cycle cost is incredibly important for us; it is not just the initial expenditure, but what is it going to cost over the period of time that we occupy the asset?

Mr. GRAVES. Great. Thank you, Administrator. Thank you.

Mr. CRENSHAW. Thank you. Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman. Welcome.

Mr. TANGHERLINI. Thank you.

Mr. QUIGLEY. There have been national analysis of LEED certification and other certifications by the private sector that show energy savings, cost savings that you are well aware of, correct?

Mr. TANGHERLINI. Yes, and in fact, in our evaluation of alternative certification methods, which we are required to do as part of the Department of Energy, it was based on the understanding that there was benefit to these certifications. As I said before, we find third party certifications to be incredibly useful in actually proving whether we are getting what we are paying for or not.

Mr. QUIGLEY. Sure, and we welcome whatever works best and I note that you talk about the fact that different certifications matter for different types of use for buildings and we understand that as well, but there is also an evolving world from when LEED certification started.

Mr. TANGHERLINI. Yes.

Mr. QUIGLEY. There are other things about water savings and, you know, what comes off the rough and so forth in flood areas that really makes a difference as well. They are also cleaner buildings, healthier buildings, buildings that reduce the environmental footprint in the region as well, correct?

Mr. TANGHERLINI. That is true, and I think it is actually some of the evolution of the certifications that has caused some of the controversy over the last year or two, and I think we just need to be aware that this is an evolving science, it is an evolving approach to making sure that we are being as smart as we possibly can and building buildings that will be around for a long time.

Mr. QUIGLEY. I agree. Let's talk about buildings that should not be around anymore. I think your inventory is over 900,000?

Mr. TANGHERLINI. Our inventory at GSA, including leases, is only about 10,000, but the broader federal building inventory reaches your bigger number.

Mr. QUIGLEY. 900,000. It adds up after a while.

Mr. TANGHERLINI. Yes, it does.

Mr. QUIGLEY. We got something from the Congressional Research Service that their latest estimates are about 77,000 buildings were identified as either not utilized or underutilized. Does that also comport with numbers you are familiar with?

Mr. TANGHERLINI. Those numbers come out of the Federal Real Property Profile. Those numbers are a couple years old at this

point, but the rough order of magnitude costs the federal government there roughly, right?

Mr. QUIGLEY. Well, bonus points for telling Mr. Chaffetz and I what a great bill we have on a pilot program to get rid of the ones that we do not need. If you want to touch on that, fine, but your best plan to help us drive this because it is not just the cost of not selling them and the money, and I do not know how much there would actually be there, but it is the extraordinary cost of maintaining them and sometimes the risk involved with those buildings being abandoned. What is your fast track way to help us get rid of the buildings we do not need anymore?

Mr. TANGHERLINI. Well, we appreciate actually, as you pointed out, the fact that both the House and the Senate have proposed bills to speed disposal of underutilized or vacant property. The president, once again, in his Fiscal Year 2015 budget request, also includes a proposal. I have said that those are the three ingredients you need to get anything done in Washington: a House proposal, a president's proposal, and a Senate proposal. Hopefully this year will be a year where we could maybe move something forward.

In the meantime, frankly we see it as one of our core responsibilities to make sure that we are delivering the best quality asset, which means getting rid of assets that no longer serve the American people.

I will tell you GSA has only 23 locations on that list of vacant or underutilized properties and in each one of those cases, I am working very closely with Norman in the Public Building Service to have a plan to dispose of those assets that are repurposed.

Mr. QUIGLEY. Not to interrupt, but do you play a role in helping other agencies get rid of all the other ones that we talked about as well?

Mr. TANGHERLINI. Well, we play a role if the agency wants us to play a role, and so we have been working very closely with agencies such as the National Aeronautics and Space Administration, NASA. We have helped NASA broker a deal with a private sector operator for Moffett National Airfield and we are in the final negotiations with a very prominent local business partner who is going to actually operate that field, take it off the rolls of the books of NASA; NASA will no longer have to pay to operate and maintain it, and as an extra benefit to the federal taxpayers, the Hangar One, the historic, iconic Hangar One will be re clad by the operator of that airfield.

Mr. QUIGLEY. What do we best on for getting rid of these? Is it saving money for lack of maintenance and so forth or is it the additional revenue we are going to get in actually selling these?

Mr. TANGHERLINI. I actually think the real benefit is the long term benefit to the agency of not having to worry about what it is going to do with that asset, how they are going to maintain it, how they are going to fund additional resources. The other long-term benefit is a benefit to the national account. Returning these assets to productive use within the economy of the localities in which they occupy is an unwritten part of the benefit of this story. By auctioning the West Heating Plant just over here in Georgetown, we have got \$19 million towards reduction of the cost of federal government, but more importantly, there is now a private sector devel-

oper who is going to turn that building into something employing hundreds of people in the process and providing tax revenue and benefits to the economy as a result.

Mr. QUIGLEY. Thank you. Thank you, Mr. Chairman.

Mr. CRENSHAW. There are four votes. There is eight minutes left. We have three folks that have questions. So I think we can finish up and I am sure there are questions for the record, but let's go to Mr. Amodei.

Mr. AMODEI. Okay. Thank you, Mr. Chairman and in view of that, I will just abbreviate my comments. Mr. Administrator, I want to sensitize you to an issue that we have seen in other executive branch agencies. I want to revisit the stuff that happened in conferences four years ago. What I do want to revisit or do want to visit with your staff offline is to check to make sure that as a result of those things that there are not any internal administrative policies within GSA that say, "Stay away from these locations," as it is our belief, and as you said in your statement, your priority is continue to improve efficiency of our own operations so that we utilize resources in the most effective manner possible.

All I am concerned about is to the extent when you folks go to have a meeting, a training, a conference, whatever somewhere that you are picking the place with the best value for the taxpayer and not being afraid of the fact that perhaps, as for instance Department of Justice has done, says, "For God's sake, stay away from New Jersey and Nevada because gambling is legal." I am sure you are not going to say, "We want to stay away from Washington State or Colorado because some of their recreational smoking activities might be dangerous," or, "God forbid, stay with the coastline because you might drown." So you get the gist.

We will go ahead and visit with you offline just to make sure that there are not any, because I know there are no statutes or regulations on the requiring that, and make sure there are not any administrative policies doing that and I yield back. Thank you, Mr. Chairman.

Mr. TANGHERLINI. Thank you.

Mr. CRENSHAW. Thank you. Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman. Thanks for coming back to our hearing again this year Mr. Administrator. Last year when we were here, we had a conversation about the same topic that Mr. Quigley just raised, which is a very important one, which is all of the property the federal government owns and how we can dispose of portions of it that are unneeded, unused, and are not benefiting taxpayers. One critical component to that is being able to know where all the property is. I thought you might update us on what the GSA has done since our hearing last year.

My question was then, and it still is now, does the GSA have an ability to pinpoint every piece of property owned by the GSA and does the federal government have the ability to pinpoint every piece of property, real property owned by the federal government? Can we geolocate that property, can we point to it on a map very easily, and can we search in a way in which I could tell my constituents how many golf courses the federal government owns? Can we answer that? Can we answer how many parking garages the federal government owns, how many hotels the federal government

owns, how many grocery stores, and what has changed over the last year? I know we had this dialogue. You were working on it. Where are we now and how can we get to a point that we need to be?

Mr. TANGHERLINI. No, I really appreciate you asking the question because I took your last set of questions last year really as a challenge to the organization and our staff to make substantial progress. I can tell you for GSA, we actually do have a website where you can go and it shows a map of the United States and you can click on any state and you get the congressional districts and it will tell you every property and it will tell you the specifics of the property, whether it is leased, whether it is owned, what the terms of the lease are, and we are working to actually make that much more graphically interactive and simple for people to use.

We want to use the progress we have made at GSA, because those are the assets we control and, frankly, we think we are the best at this or among the best in the federal government. We would like to take the progress we have made at GSA and then export that across the federal government to other agency landowners.

In the meantime, we are working very closely with OMB, and there has been great leadership there with Director Burwell and Deputy Director Cobert, to get the Federal Real Property Council to really push up the quality of the data it is putting in to the Federal Real Property Profile so that we can be much better about answering what is the status and the nature and the quality of assets.

I can tell you we are not quite there yet where there is one website where people can click and ask those questions, but we have taken a substantial step in that direction over the last year, particularly starting at GSA, and we want to export that progress to other agencies.

Mr. YODER. Well, I was looking at your website earlier. It does seem like you have made some significant progress in that. We are going to kind of work through it and see where we can even make it more user friendly because the idea is to let the public and everyone in this country know what they own and be able to find it. That will hopefully have all of us looking to root out waste and find efficiencies and hopefully what you are doing here as a model that we can push to other parts of the federal government.

Mr. TANGHERLINI. We agree, and we would love your ideas and suggestions.

Mr. YODER. Right. Thank you for your work. I appreciate it.

Mr. TANGHERLINI. Thank you.

Mr. YODER. Thank you, Mr. Chairman.

Mr. CRENSHAW. Well, I think those are all the questions and we appreciate the work that you are doing.

Mr. TANGHERLINI. Thank you.

Mr. CRENSHAW. I think having a list of all the property that the federal government owns would be a great idea and I know you are working on that.

Thank you for the work you do. I thank the members for their understanding. We have got about a minute and a half left to vote and they are four votes. So, again, this meeting will stand adjourned.

Financial Services and General Government Subcommittee
Hearing on the
General Services Administration FY2015 Budget
for Administrator Dan Tangherlini

Questions for the Record Submitted by Chairman Ander Crenshaw

Property Exchanges

The Public Building Service has broad authority to carry out an exchange; however the GSA Office of Inspector General issued an audit at the end of the last year expressing concerns about a lack of policies and procedures to carry out this kind of exchange.

Q1: What have you done to address the concerns of the Inspector General audit?

The Public Buildings Service (PBS) is developing guidance specific to exchanges of property for services under section 412 of the Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, 118 Stat. 2809, 3259 (2004). PBS also has guidance in a memo titled "Guidance for Real Property Exchanges of Non-Excess Property", dated April 8, 1997. This guidance outlines the procedures and minimum documentation requirements for real property exchanges authorized under various provisions in title 40 of the United States Code.

Q2: Where are you at in the process?

PBS expects the guidance to be finalized before the end of Spring 2014.

Q3: When did you last get the FBI building appraised?

The last appraisal for the J. Edgar Hoover Building (FBI Headquarters) was completed in 2010.

Q4: Do you anticipate that the costs of a new FBI campus will be entirely covered in an exchange?

We anticipate that the competitive forces of the exchange and the unique characteristics of the Hoover site will maximize its value.

Q5: If the cost of constructing a new FBI campus exceeds the amount arrived at in an exchange, will GSA be requesting funding in an appropriations request?

If the cost exceeds the amount arrived at in an exchange, GSA would evaluate any portion that could not be accommodated under the exchange. Any additional funding requirement could be met through the reprogramming of funds, exchange of another asset or assets, use of GSA construction funds, request of future appropriations from Congress, or some combination of any or all of these options.

GSA is committed to working closely with Congress as the project progresses.

Q6: At what point do you expect to know the delta between the cost of a new FBI campus and an exchange of the FBI headquarters?

If there is a delta, this would be known once the developer selection has been made.

Federal Strategic Sourcing Initiative

Recently the General Services Administration (GSA) began their Federal Strategic Sourcing Initiative (FSSI). While the intent of the FSSI is streamline procurement and reduce prices, the program is being implemented in a way that seems to do just the opposite. Under the FSSI, the GSA is consolidating bids normally open to nearly 400 contractors to four contractors. It would seem that eliminating the bidding pool and ensuring only 1% of the previous pool could bid on projects would decrease pressure to deliver a less expensive, quality product.

Q7: How does reducing the number of contractors so drastically in the short term lead to long term gains in price reduction and quality?

Federal Strategic Sourcing Initiatives (FSSI) solutions are a proven method from the private sector to reduce costs in organizations. FSSI incorporates government-wide requirements, best practices, and terms and conditions. Requirements and terms and conditions are gathered through interagency commodity teams. Best practices are fostered through both the commodity team discussions as well as active engagement with industry. Maximizing small business utilization is a top priority; teams actively strive to increase participation by small businesses.

An award is made based on meeting all aspects of the solicitation. Volume ensures better pricing.

Long term gains in price reduction have already been proven. Office Supplies 2 (OS2) has current savings of 17 percent from typical pricing on office supply purchases in the government. Domestic Delivery Services 2 has savings of over 25 percent from pricing through previous delivery vehicles.

The quality discussion encompasses best value over lowest price, understanding the government's purchasing needs (e.g. understanding a real needs vs. gold-plating) and actively engaging in demand management (e.g. dropping express shipping from approximately 80 percent to 45 percent).

Q8: What is the GSA doing to mitigate the effect of the FSSI on small businesses?

Per OMB's December 2012 memo, all strategic sourcing solutions must baseline small business use and set goals to meet or exceed that baseline participation.

GSA's experience with FSSI has demonstrated increased volume to small businesses. Thirteen of fifteen vendors in OS2 are small business. Two of the small business vendors are actually small business consortiums (one of which has 125 vendors). The baseline spend to small business for office supply purchases in typical contracting vehicles is 67 percent, while OS2 spend to small business is far higher at 76 percent.

We require that new, upcoming solutions complete statutorily-required consolidation and bundling analysis where applicable. There are a handful of solutions being developed in industries dominated by large businesses and those solutions consider subcontracting opportunities.

SBA is part of the Strategic Sourcing Leadership Council (SSLC), which governs all FSSI. SBA is invited and encouraged to participate on all teams from the onset of the solution; several teams have representatives from SBA and/or OSBU.

Q9: How does GSA justify such a large and sudden sourcing shift especially in light of the impact it is having on small businesses?

Strategic Sourcing is not sudden. In 2005, the Office of Management and Budget (OMB) called upon Federal agencies to "leverage spending to the maximum extent possible through strategic sourcing." OMB has issued several memos since then, expanding the goals and definitions for Strategic Sourcing. Most recently, OMB released a memo in December 2012 that called upon GSA to create 10 new FSSI solutions within the next two years.

The 2012 OMB memo also called for the establishment of the SSLC, a body that would provide "leadership of the government's strategic sourcing efforts," and would provide, by March 2013, "a set of recommendations for specific goods and services ...that would ensure that the federal government receives the most favorable offer possible." The memo called for the SSLC to be comprised of representatives of the seven agencies with the largest spend. In addition, and because "small businesses play a vital role in federal contracting," the SSLC includes a representative from SBA.

Strategic Sourcing is part of the second-term presidential management agenda. In this time of tight Federal budgets, it is important to reduce unnecessary duplication of effort, increase efficiency, and save taxpayer dollars. Strategic Sourcing improves interagency coordination and best-practice sharing and as such it has been elevated to a Cross-Agency Priority Goal. Moreover, multiple GAO reports over the last decade specifically encourage the promotion of Strategic Sourcing practices within the Federal Government to promote better spend management.

The goal of Strategic Sourcing is to reduce the total cost of ownership, increase operational efficiency, gather data to drive better decisions, to share best practices, and to maximize small business participation. Strategic Sourcing is not only about price, and solutions are not always in the form of an acquisition. It can also focus efforts on improved commodity and/or demand management. For example, Print Management came out with a PrintWise campaign focused on seven steps to printing better. Savings can be achieved by printing in black and white, changing printing settings to print double-sided, and using particular fonts. A print policy template, drafted through the Federal Environmental Stewardship Working Group, encompasses PrintWise better printing practices. This policy template is in the process of being embedded into Federal Management Regulations. Another example of demand management success has been Domestic Delivery Service's ability to increase shipping in ground service (versus air) from 11 percent to 58 percent from 2009 to 2013 through active program management by the intra-agency commodity team. Team strategies are not solely made by the agency leading the effort. Intra-agency commodity teams establish the strategy and are integral in leading change within their agencies. PrintWise and Domestic Delivery Services successes occurred because the government community united to promote better purchasing behavior.

Wireless Service Antenna Structures

When Congress enacted the Middle Class Tax Relief and Job Creation Act back in 2012, Congress directed GSA under Section 6409(c) to develop a master contract to govern the placement of wireless service antenna structures on buildings and other property owned by the Federal government. This was to be complete within 60 days of enactment.

Q10: When does GSA expect to complete the master contract?

GSA drafted the master contract within the 60-day period mandated by section 6409 of Public Law 112-96. Given that the contract is to be used by executive landholding agencies to facilitate streamlined contracting with private sector telecommunications carriers for the installation of the carrier's antennas on Federal facilities, the master contract is based on the contract GSA uses to outlease space for private sector antenna installations at GSA-controlled facilities.

Q11: What has prohibited GSA from moving forward with a master contract?

GSA has not been prohibited from moving forward with the master contract. Once the contract was completed, GSA, as co-chair of the Broadband Deployment Working Group that was established to implement Executive Order 13616, "Accelerating Broadband Infrastructure Deployment", used the Working Group to introduce the master contract to the other executive landholding agencies.

Q12: Has GSA held any public workshops or forums on how to address the master contract?

GSA held several workshops for executive landholding agencies on the master contract and how to use it as part of the Broadband Deployment Working Group. The master contract is not a form the public will use; rather, the contract will be used by executive landholding agencies to document the agreement between the United States and the private sector telecommunications company concerning the installation of the carrier's antenna on Federal property.

Q13: Has GSA initiated a rulemaking process for the adoption of a master contract?

GSA plans to include language in the Federal Management Regulation to instruct executive landholding agencies on use of the master contract as directed by section 6409 of Public Law 112-96.

Questions for the Record Submitted by Congressman Mario Diaz-Balart

The Dyer Courthouse, vacant since 2008, has cost taxpayers \$1.2 million dollars annually to maintain since its closure. The courthouse now suffers from an extensive mold problem. GSA estimates the building needs nearly \$60 million in remediation to make it usable for private sector or federal use. As you know, Miami-Dade College is deeply interested in the facility and is in conversations with GSA about it. You have a well-respected entity willing to spend tens of millions of dollars of their own to revitalize and rehabilitate the building.

Q14: What steps is GSA taking to dispose of this landmark facility?

GSA is currently in discussions with Miami-Dade College (MDC) about a potential outlease of the historic Dyer Courthouse. This approach, which would be accomplished under section 111 of the National Historic Preservation Act, 16 U.S.C. § 470h-3, has been used by GSA successfully in the past. In March 2014, GSA representatives met with officials of MDC on their Wolfson Campus to discuss the framework of such an outlease. Both parties subsequently participated in a walk-through of the Dyer Courthouse and GSA recently transmitted a proposed term sheet to MDC for its consideration.

Q15: What is the next step in conversations with the College? When are you meeting again?

Building on previous discussions, the parties will be meeting at the Dyer Courthouse in May 2014 to discuss due diligence matters regarding the infrastructure and building systems and to clarify other matters related to a potential outlease of the property.

Q16: What timeline can you give this committee as to when GSA expects to dispose of it?

GSA is actively working with MDC on due diligence feasibility and related infrastructure matters regarding the Dyer Courthouse. Once the parties have completed this due diligence process, both parties will be in a better position to assess the viability of the proposed

transaction. GSA will continue to maintain active discussions with MDC throughout the process and keep the Committee updated.

Questions for the Record Submitted by Ranking Member José Serrano

You've consolidated functions under the CFO and the CIO.

Q17: How has this been implemented and what has been the result?

The FY 2015 budget demonstrates a \$39 million reduction in the Working Capital Fund from the FY 2014 budget. The reduction is a result of the continued multi-year effort to consolidate GSA-wide support offices, such as the Chief Financial Officer (CFO) and Chief Information Officer (CIO).

With regard to the CIO, we brought together all IT functions, budgets, and authorities from across the agency under an accountable, empowered GSA CIO. We used to have 17 different regional and bureau CIOs in GSA, now we only have one. To improve management and accountability, we established the Investment Review Board co-chaired by the GSA CIO and CFO with oversight and authority over all GSA IT spending. Prior to this consolidation, GSA's business lines and often the regions had separate IT systems and budgets, providing limited visibility and oversight into proposed investments and creating significant redundancy and inefficiency.

With regard to the CFO, once the consolidation is completed, all financial professionals in GSA will report to the GSA CFO. This will improve internal controls and efficiency. The realignment has moved all funds certification and approval functions into the Office of the Chief Financial Officer (OCFO), improving oversight and control of how GSA funds are spent. The OCFO is currently working through a Concept of Operations Process that will define the mission of the new OCFO and optimize policies and procedures to drive efficiencies.

Q18: Can we expect more consolidations?

Major phases of our consolidation process have been completed, however, the consolidation will continue to generate operational efficiencies for many years. GSA will continue to review staffing levels and structure and may pursue re-alignments or further consolidations as appropriate.

There was actually funding for new construction for the first time in a while.

Q19: How far along does that get you toward addressing your backlog?

From Fiscal Years (FY) 2011 – 2013, more than \$2 billion was cut from GSA's budget requests for crucial investments in the nation's public buildings. The Building Research Board of the

National Research Council maintains a widely accepted industry standard for repair and alterations investment of 2% to 4% of the replacement value of a facility. If the Federal Buildings Fund is fully funded, GSA achieves the low end of that range. With the partial funding received in Fiscal Year 2014, GSA will begin addressing many of the unfunded priorities from prior fiscal years.

Additionally, beyond the backlog of repair and alterations projects, GSA also has had to forego investment in critical new construction projects that would support economic growth and national security. While the Administration has requested more than \$700 million in support of upgrades to land ports of entry (LPOE) over the last four fiscal years, only the request in FY 14 of \$280 million has been appropriated. Additionally, continued investment in the Department of Homeland Security consolidation at St. Elizabeths was pushed back through cuts of more than \$500 million from what was requested for GSA's portion of the project. With the lack of appropriations, GSA and DHS had to revise the project delivery strategy, pushing the timeline for completion from FY 2016 to FY 2026.

The \$745 million of New Construction funds in the President's FY 2015 Budget is intended to support three LPOE projects, the ongoing consolidation at St. Elizabeths campus, one remediation effort, one cyber campus, two building purchase projects, and one minor construction project.

You're proposing to combine the Federal Citizens Services Fund and the Electronic-Government Fund. Many good government groups have opposed this effort in the past, and I am concerned that this change will decrease funding for, and concentration on, important transparency programs.

Q20: Why did you propose this change when it has been rejected in past appropriations bills?

We are proposing merging the Electronic-Government Fund (E-Gov) and the Federal Citizens Services Fund to take better advantage of efficiencies that are resulting from the increasing use of digital technologies and services across all the work we do, including agency and citizen facing initiatives. Since the E-Gov Fund was established in 2002, digital technologies and services have evolved dramatically. By combining the funds, we can better leverage investments in people, projects, and tools that cut across both funds to take best advantage of the Office of Citizen Services and Innovative Technologies (OCSIT)-wide capabilities. This has become increasingly apparent as we develop new and enhanced digital government initiatives.

Q21: What efficiencies will you achieve?

The merged OSCIT and E-Gov funding will be used to expand the work GSA is doing to develop innovative government-wide services and solutions that leverage digital technologies to

improve the efficiency and effectiveness of government. We are exploring the development of several new initiatives, including the following:

- Scale and expand GSA's highly successful First Fridays program to establish a web usability center of excellence. It will expand access to and use of web/mobile usability, including best practices, training and testing.
- Freedom of Information Act (FOIA) automation to improve discovery and reuse of frequently requested information and reduce FOIA requests through expanded open content and data.
- Templates for digital content that significantly improve reuse, flexibility, and consistency of Federal websites and service delivery.

You're also proposing additional funding of \$250.534 M for DHS consolidation at St. Elizabeth's.

Q22: How much funding from all sources have you received for this project?

GSA has received \$1.09 billion in support of investment for the campus. GSA has also received reimbursable work agreements from the Department of Homeland Security totaling approximately \$454 million. A total of \$1.58 billion has been provided to both GSA and DHS for the consolidated DHS HQ project.

Q23: What will your proposed funding achieve?

GSA's FY15 budget request seeks \$251 million to continue Phase 2A development and construct the access road across Shepherd Parkway to Malcolm X Avenue, a new interchange between Malcolm X Avenue and I-395, and renovation of the adjoining buildings to the Center Building, which make up the Center Building Complex.

Q24: How much is left to go on this project—how many more requests and for what amount?

For GSA's portion of the investment, approximately \$1.75 billion is required based upon the GSA/DHS schedule that was last revised and shared with Congress in FY 2013. The FY 2013 schedule identified smaller phases than was originally envisioned in FY 2006. The Administration's future budget year requests will reflect the most cost effective path forward for a consolidated HQ function. The exact number of requests and the corresponding amounts is subject to budget formulation in the outyears.

As you know the Judiciary has a Five Year Courthouse Construction Project Plan to prioritize its new courthouse needs. The Administration has not requested funding for new courthouse construction in the President's Budget in four of the last five years, nor has a feasibility study been initiated by GSA for a courts' project since 2009.

Q25: Is GSA committed to meeting the space needs of the Judiciary, your largest customer, going forward and if so how?

GSA continues to be committed to meeting the space needs of the Judiciary and will work with the Judiciary to request funding for its priorities.

Since 1996, GSA has funded more than \$4.976 billion in courthouse construction priorities. In the President's FY15 budget, \$20 million is included for Judicial Security projects to address high-priority security needs in existing courthouses. Additionally, GSA has requested funds in FY15 for two major repair projects largely for the Courts: \$29 million for the Phillip Burton Federal Building & U.S. Courthouse in San Francisco, CA and \$40 million for the Theodore Levin U.S. Courthouse in Detroit, MI.

GSA and the Administrative Office of the U.S. Courts (AOUSC) have taken numerous steps to reduce courthouse costs. After the Judiciary declared a moratorium on courthouse construction in 2004, AOUSC began an Asset Planning Process to reexamine all of the projects that previously were on the five-year plan. The new process redefined the selection criteria used by the Courts to select projects for inclusion in the five-year plan and has eliminated many projects that previously were on the five-year plan for new construction.

As of March 2014, the Judicial Conference of the United States has identified over \$1.182 billion of courthouse construction priorities through FY 2018. The majority of projects on this plan have received previous partial congressional funding and approval and the plan is largely geared toward the completion of these projects.

Additionally, GSA agreed with the Government Accountability Office recommendation to improve the transparency of cost information regarding the retention and reuse of old courthouses and, when proposing new courthouses, the Administrator of GSA, in consultation with the Judiciary, as appropriate, will include (1) plans for re-using or disposing of the old courthouses; (2) challenges with implementing those plans, including any required renovations and related cost estimates, to be updated as needed; and (3) when the plans involve re-locating federal tenants from commercially leased space to the old courthouses, estimates of the long-term costs of occupying the old courthouses versus continuing to occupy commercially leased space.

In prepared testimony for this subcommittee two weeks ago, a representative of the federal judiciary expressed concern regarding a new space rent appraisal process that, if used to calculate the agency rent bills, could potentially add tens of millions of dollars annually to the Judiciary's rent bill. I understand GSA and OMB are reviewing the new space appraisal process.

Q26: Has the Administration made a decision whether to calculate agency rent bills based on this new appraisal methodology? What is your response to the Judiciary's concerns?

GSA's Fair Annual Rent (FAR) appraisal process is intended, as directed by 40 U.S.C. § 586, to provide agencies with commercially equivalent rental rates which are paid to GSA by tenant agencies for the space and services they receive. Recent updates and clarifications to the FAR appraisal instructions better align GSA rental rates with existing market conditions and commercial practices. While some portion of a rent increase, for the Judiciary or others, may be due to refinement in the appraisal process, the impact of changes to real estate market conditions is responsible for the majority of rent increases. The expiring rental rates were put into effect five to seven years ago derived from the current appraisals reflecting current market conditions. It is also important to note, the improvement to the rent estimating process also resulted in a decrease in the rental rate for many Federally owned locations occupied by Judiciary and other Executive agencies.

As you may be aware, the Judiciary has launched a major initiative to reduce its space footprint by a target of 3 percent by the end of fiscal year 2018. Judiciary representatives appeared before this subcommittee two weeks ago to discuss this initiative and stressed that GSA's willingness to take back space is a key component to the success of their space reduction effort.

Q27: Will GSA work cooperatively with the Judiciary on this important initiative?

GSA looks forward to working cooperatively with the Judiciary on this important initiative. We believe that through such collaboration, the Judiciary's goal of reducing space and GSA's need to receive unneeded agency-occupied space that is marketable to customer agencies can both be met.

Questions for the Record Submitted by Congressman Mike Quigley

Migratory Birds

President Clinton signed Executive Order 13186 in 2001. It directs departments and agencies to take certain actions to further implement the Migratory Bird Treaty Act. Specifically, the Order directs Federal agencies, whose direct activities will likely result in the take of migratory birds, to develop and implement a Memorandum of Understanding (MOU) with the FWS that shall promote the conservation of bird populations.

Q28: What progress has your agency made with respect to complying with Executive Order 13186? It is not currently one of the agencies listed as having signed a Memorandum of Understanding with the United States Fish and Wildlife Service from my understanding. Where in the process is your agency?

GSA is working with the U.S. Fish & Wildlife Service on this issue and will keep the Committee updated.

Green Building Rating Systems

Mr. Tangherlini, an item I have focused on for some time has been the green building industry. I see three main benefits for maintaining green federal buildings. One, it saves the federal government money.

Two, its vital for the protection of our environment. And third, it is great for private businesses. Many companies in my district tell me the benefits of the growing green building industry, which allow them to sell their energy saving and water saving products around the country, and around the world. I know that in October 2013 GSA recommended that the federal government use either U.S. Green Building Council's LEED standard or the Green Building Initiatives Green Globes standard.

Q29: Can you tell me what lies in the future for green federal buildings? And what are the benefits for taxpayers?

Continued energy efficiency, research into links between buildings and human health and wellness outcomes and incorporation of climate change mitigation and adaptation strategies will all play roles in the future of green buildings.

GSA, along with other Federal agencies, has expanded its use of energy savings performance contracts (ESPCs) to finance installation of energy saving technologies and practices in existing buildings. In December 2011, the President challenged Federal agencies to enter into \$2 billion of ESPCs by December 31, 2013. GSA exceeded its target (\$175 million), and will ultimately reduce GSA's annual energy consumption by 365 billion BTUs, resulting in direct savings to taxpayers (lower utility payments) of \$10.6 million per year.

Furthermore, climate change presents many serious risks for government operations. Its impacts can not only damage facilities and equipment, but also disrupt communications networks and transportation routes needed to deliver supplies and services. Future Federal green buildings will need to be built or retrofitted using climate change adaptation strategies that will reduce property vulnerabilities. GSA is currently addressing these risks by identifying mission-critical facilities, products and services, evaluating business operations and supply chains that may be vulnerable, and anticipating the needs of other agencies that may arise from climate change. GSA is continuing its work to integrate climate change adaptation considerations into key planning and business processes, providing training and planning sessions that will help GSA better serve its customers with respect to climate risk mitigation, establishing regional pilots that will assess potential climate change risks and adaptation priorities, and assess the demand and supply for climate science and adaptation service offerings to assist other agencies with adaptation planning and risk mitigation. Although the timing, scope, and severity of future climate change impacts are impossible to predict precisely, future impacts will have serious consequences.

Q30: Can GSA do more to help lead the way with awareness both among businesses and the general public when it comes to the importance of green buildings?

GSA can continue its evaluation and as appropriate, use of innovative technologies and approaches in its buildings that save energy, water and money. GSA can also improve its outreach to industry groups with data on the benefits of green buildings and how green buildings can help agencies achieve their mission.

GSA has jurisdiction over 9,624 Federally owned or leased properties and maintains an inventory of more than 370.2 million square feet of workspace for 1.1 million Federal employees. In its Green Proving Ground program, GSA leverages its Federally owned assets and conducts real-world evaluations of the performance of emerging building technologies. The results from these evaluations help GSA to improve the performance of its buildings while assisting industry in deploying new technologies and practices into the broader market. GSA can still do more.

GSA will be conducting more case studies on its use of innovative practices and approaches in the design, construction, and operation of its public buildings, and GSA will be publishing more data on the associated cost savings. GSA also is meeting with industry groups to show the benefits of green buildings and the savings data from using these innovative practices and approaches. GSA has joined the Better Buildings Alliance, managed by the Department of Energy, and uses these forums to educate members in different market sectors about GSA's work. GSA also is actively developing continuing education credits with the American Institute of Architects and other similar groups for courses we are developing. GSA's Sustainable Facilities Tool (www.sftool.gov) is being expanded with the best practices we have developed and researched.

GSA also can collaborate more with its building occupants and customer agencies to discuss the importance of green buildings and the benefits they provide. Providing empirical evidence of the benefits of green buildings and making the business case for building green to building occupants and customer agencies will increase their desire to be housed in green buildings, which will push industry even harder to provide services that help the Federal Government save more energy, water, and taxpayer dollars.

City Pair Program

Recent GSA City Pair Program awards are raising concerns that foreign carriers are manipulating the process to gain these valuable contracts.

Q31: Is GSA doing all they can do to ensure that the bid and award process is keeping with both the letter and spirit of the Fly America Act?

In contracting for scheduled air transportation for Government-wide use, GSA relies on competition among U.S. certified carriers to ensure the procurement of cost-effective air service for Federal travelers. Acceptance of offers from U.S. flag carriers that have code-sharing

agreements with foreign air carriers significantly increases the service options that GSA can consider. GSA makes certain that carriers identify service under a code sharing arrangement relative to the offer. U.S. carriers are also required to certify that the foreign carrier's operations and maintenance function largely in the same manner, and provide a substantially equivalent level of quality and safety, as the U.S. carrier. GSA reviews offers and ensures they meet both contract and statutory requirements.¹

Q32: How is it consistent with the Fly American Act for the GSA to award a city pair contract to a carrier that doesn't have scheduled passenger service and therefore know the foreign carriers would fly 100% of the traffic, when there were two US carriers that directly serve that city?

GSA's award of a city pair contract to a U.S. flag air carrier that offers service with a foreign air carrier is consistent with the Fly America Act when the service is offered under a code-share arrangement with the foreign air carrier. This is supported by a Government Accountability Office (GAO) decision wherein GAO examined whether a U.S. Flag air carrier's arrangement to provide passenger service in international air transportation on the aircraft of a foreign air carrier under a "code-share" arrangement with the foreign air carrier would meet Fly America Act requirements. B-240956, Sept. 25, 1991. The Comptroller General concluded that such service is air transportation provided by a U.S. air carrier for purposes of the Fly America Act and is an acceptable form of air transportation service for Government-financed travelers when, under such code-share arrangements, the U.S. carrier is responsible for the travel service and receives a substantial portion of the revenue.

¹ Pursuant to 41 CFR § 301-10.134 of the Federal Travel Regulation, U.S. flag air carrier service is "service provided on an air carrier which holds a certificate under 49 U.S.C. 41102 and which service is authorized either by the carrier's certificate or by exemption or regulation. U.S. flag air carrier service also includes service provided under a code share agreement with a foreign air carrier in accordance with Title 14, Code of Federal Regulations when the ticket, or documentation for an electronic ticket, identifies the U.S. flag air carrier's designator code and flight number." (emphasis added).

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